SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

No. 114.

DAVID L. HAMMOND, CHARLES L. HAMMOND, MARY A. KINGMAN, EMMA W. KINGMAN, ET AL., PLAINTIFFS IN ERROR,

vs.

WALTER S. JOHNSTON, RECEIVER OF THE NATIONAL BANK OF THE STATE OF MISSOURI, AND CLARA A. BAKER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original.	Print.
Citation	*a*	1
Writ of error	*c*	1
Petition for writ of error	*e*	3
Transcript from circuit court of St. Louis county	1	4
Petition	1	4
Statement of issuance of summons and return	2	5
Order making W. S. Johnston, receiver, a party defendant	3	5
Amended answer	3	5
Reply to amended answer	13	12
Dismissal as to Mary A. Washington	14	12
Death of Levin H. Baker suggested	14	12
Order making E. C. Smith and J. L. D. Morrison parties plaintiffs	14	13
Judgment	15	13
Motion for new trial filed	16	14
Order overruling motion for new trial	16	14
Bill of exceptions filed	16	14
Affidavit and bond for appeal filed and appeal allowed plaintiff	16	15
Bill of exceptions	17	15
Plaintiffs' case	17	15
Proceedings of board of commissioners, January 31, 1811	17	15
Deed from Jos. Hunot to Jos. Vandenbenden, May 12, 1810	18	16

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 29, 1891.

	Original.	Print
Confirmation by Recorder Bates, November 1, 1815	22	18
Deed from Jos. Vanden Benden to Rufus Easton, November 4, 1815	23	19
Certificate No. 161, to Jos. Hunot	28	23
Claim of R. Easton under certificate No. 161	28	23
Location of R. Easton under certificate No. 161	29	24
Survey No 2500 under certificate 161	30	24
Two certified copies survey No. 2500 under certificate 161	30	25
Act of Congress of June 30, 1864	35	28
Deed of R. Easton to Wm. Stokes, July 10, 1819	36	29
Deed of R. Easton to Samuel Hammond, September 29, 1823	39	31
Deposition of Andrew J. Hammond	42	33
Jos. S. McKie	45	36
James H. Washington	47	37
Susan Briquet	48	37
Claudius Briquet	50	39
Augusta C. Barsh	51	40
Wm. F. Barsh	52	41
Mary A. Kingman	53	42
Samuel E. Hammond	55	44
Deed of Claudius Briquet and wife to E. C. Smith, March 7, 1874	61	48
Deed from E. C. Smith to J. L. D. Morrison, May 20, 1874	63	48
W. F. Barsh *et al.* to J. L. D. Morrison, April 24, 1874	65	51
T. M. Price and wife to J. L. D. Morrison, April 27, 1874	67	52
David L. Hammond to J. L. D. Morrison, April 27, 1874	69	54
Sarah G. Hammond to J. L. D. Morrison, May 16, 1874	71	55
Charles L. Hammond to J. L. D. Morrison, May 16, 1874	73	57
Samuel E. Hammond to J. L. D. Morrison, May 16, 1874	75	58
Mary A. E. Kingman *et al.* to J. L. D. Morrison, May 18, 1874	78	60
Mary A. Washington to J. L. D. Morrison, May 16, 1874	81	62
Testimony of Oscar W. Collett	85	64
Defendants' case	86	65
Deed from Jos. Hunot and wife to Peter Lindell, Dec. 5, 1834	86	65
Stipulation as to evidence	88	67
Record—Relfe, Chew, *et al. vs.* Samuel Hammond	90	68
Judgment	90	68
Assignment of errors	93	70
Judgment affirmed	94	71
Execution	95	71
Sheriff's return on execution	97	72
Advertisement	98	73
Certified copy of sheriff's deed to Relfe and Chew	101	75
Power of attorney from Relfe and Chew to John O'Fallon	107	79
Deed from Relfe and Chew, by attorney, to Peter Lindell	109	80

	Original.	Print.
Concessions by Spanish government to Pierre Lacroix	112	83
F. Corneau	113	83
A. Bacannet	113	83
G. Hanrion	114	84
G. Bizet	114	84
K. Des Noyes	114	84
Veuve Hebert	115	84
Becannet	116	85
Land patent to Joseph Hunot, August 30, 1859	117	86
Letter of Commissioner of General Land Office to Secretary of Interior, January 14, 1857	128	91
Schedule of papers of Cozzens' surveys accompanying same	129	92
Decision of Commissioner of General Land Office on Cozzens' survey, November 27, 1856	134	96
Communication from Surveyor General Clark to Commissioner General Land Office, August 19, 1852	136	97
Communication "A" from Surveyor General Conway to W. H. Cozzens, May 9, 1846	169	117
Communication "B" from Surveyor General Conway to W. H. Cozzens, May 9, 1846	174	120
Plat accompanying the above	175*a*	121
Communication from Surveyor General Loughborough to Commissioner General Land Office, January 30, 1855	175	121
Notice to surveyor general, dated May 9, 1846	207	140
History of survey of W. H. Cozzens, dated 1850 and 1851	208	141
Plat of Cozzens' survey	229*a*	155
Entry of 480 acres under certificate No. 161 for Rufus Easton	230	156
Patent certificate No. 404, in favor of Jos. S. Hunot	230	156
Letter from Commissioner General Land Office to W. H. Ashley, 8, '34	231	156
Letter from J. Phillipson to Commissioner General Land Office, July 15, 1841	231	157
Letter from Surveyor General Clark to Commissioner General Land Office, August 9, 1852	232	157
Statement of location and surveys under New Madrid certificates	233	158
Letter from Surveyor General Loughborough to Commissioner General Land Office, October 14, 1857	235	159
Letter from A. Renard, recorder, to Commissioner General Land Office, February 18, 1859	240	162
Patent certificate No. 492, February 18, 1859, in favor of Jos. Hunot	241	163
Relinquishment of United States by Rufus Eastón, November 1, 1816	243	164
Letter from Peter Lindell to Commissioner Land Office, March 12, 1833	244	165
Letter from Surveyor General Loughborough to Commissioner General Land Office, June 23, 1858	245	165
Letter from Commissioner General Land Office to Surveyor General Loughborough, August 25, 1858	246	165
Letter from the Secretary of the Interior to Commissioner General Land Office, November 12, 1860	248	167
Public notices in connection with Cozzens' surveys	252	169

	Original.	Print.
Grant to Wm. Bisette	257	172
Survey No. 3340	258	173
Confirmation to L. Laroche's representatives (survey 1665)	264	177
Letter from Commissioner General Land Office showing patent to Jos. Hunot August 30, 1859	272	181
Letter from Commissioner General Land Office to recorder General Land Office, August 30, 1859	273	181
Letter from Commissioner General Land Office to Commissioner Indian Affairs, January 23, 1860	274	182
Copy of patent to McCullough heirs, December 29, 1859	275	183
Certified copy of judgment *vs.* Samuel Hammond in favor United States	278	185
Schedule of Samuel Hammond's property	284	180
Copy of deed of Samuel Hammond to United States	287	191
Letter of United States district attorney to agent of Treasury, November 23, 1824	289	192
Letter of John Gadsden to agent of Treasury, March 13, 1826	290	193
Petition of S. Hammond to President of the United States, February 21, 1826	290	194
Deposition of John B. Hortiz	296	197
Testimony of Benoist Mareschal	304	202
T. Crévia	313	208
Pierre Grinnell	323	216
F. Robadeaux	327	220
L. Charlevoix	339	229
S. Blood	353	240
Proclamation in regard to 13th constitutional amendment	364½	248
Order from War Department, U. S. A., August 8, 1865	369	251
Order from War Department, U. S. A., August 14, 1865	372	252
Concession to P. Lacroix; also the survey	378	255
Testimony of Wm. H. Cozens, direct	379	258
Testimony of Richard Dowling	411	279
John F. Darby	416	283
J. L. D. Morrison	428	290
Monroe R. Collins	434	293
Plaintiffs' case in rebuttal	437	295
Act of Congress, March 7, 1867	437	295
Letter from General Land Office to Wilson, recorder of land titles, April 6, 1860	442	298
Letter from Secretary of Interior to Commissioner of General Land Office, November 12, 1860	444	298
Letter from Commissioner General Land Office to recorder of land titles, November 12, 1860	448	300
Letter from Commissioner General Land Office to recorder of land titles, and marginal note on same	453	303
Certificate of baptism of J. B. Hortiz, March 13, 1793	454	303
Certificate of baptism of Eleanor and Briggitte Hortiz, &c.	456	304
Translation of same	457	305
Survey No. 2712	458	305
Survey No. 2620	460	307
Survey No. 2692	462	308
Survey No. 993	463	309
Deed of A. McNair to W. Stokes, March 22, 1820	464	310

	Original.	Print.
Survey No. 1332	469	312
Deed from S. Labadie and wife to J. Phillipson, June 9, 1817	470	312
Deed from E. Yoste and wife to Labadie and Phillipson, June 17, 1816	473	315
Deed from C. Roy to C. Gratiot, August 17, 1816	476	317
Deed from C. Gratiot to J. P. Cabanne, October 24, 1816	477	318
Instructions to Wm. H. Cozens, May 9, 1846	480	320
Instructions to Wm. H. Cozens, February 22, 1855	485	323
Survey No. 1813	488	325
Survey No. 3340	499	331
Letter from Surveyor General Loughborough to Wm. H. Cozzens, August 7, 1855	507	337
Survey No. 1815	509	336
Testimony of W. H. Cozens (recalled)	517	340
Certified copy of survey 2037	529	348
Survey 1270	530	349
Survey 1562	534	351
Survey 1256	538	353
Testimony of D. T. Jewett	543	355
E. C. Smith	548	359
A. L. Priest	549	359
E. Smith (resumed)	550	360
Correspondence between school board and land office	553	362
Testimony of J. L. D. Morrison (recalled)	564	369
Letter of J. F. Darby to Mary A. Washington, December 30, 1873	569	373
J. F. Darby to Mary A. Washington, February 9, 1874	571	374
J. F. Darby to Mary A. Washington, March 12, 1874	571	374
Testimony of E. C. Smith (recalled)	579	380
Appeal of C. C. Whittlesey, April 17, 1860	595	392
Darby contract with Mary A. Washington, June 14, 1873	598	394
Plaintiffs' instructions given	600	395
Plaintiffs' instructions refused	605	399
Defendants' instructions given	605	399
Defendants' instructions refused	607	400
Motion for new trial	613	405
Affidavit for appeal	614*a*	406
Bond for appeal	614*a*	406
Clerk's certificate	614*b*	407
Submission	615	407
Judgment	615	407
Opinion	618	408
Order amending judgment	640	409
Opinion	641	419
Writ of error, citation, and assignment of errors filed	649	430
Appeal bond filed	650	431
Bond	651	431
Clerk's certificate	653	432

a The United States of America to Walter S. Johnston, receiver of the National Bank of the State of Missouri, and Clara A. Baker, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein David L. Hammond, Charles L. Hammond, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, James L. D. Morrison, Edward C. Smith, William F. Barsh and Augusta G. Barsh, his wife; Thomas M. Price and Catherine V. Price, his wife; Joseph S. McKie and Anna W. McKie, his wife, and Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, and Laura Virginia Briquet, by their curator, E. H. Hesse — plaintiffs in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Elijah H. Norton, chief justice, judge of the supreme court of the State of Missouri, this twentieth day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

ELIJAH H. NORTON,
Chief Justice.

b [Endorsed:] Supreme court of the State of Missouri. David L. Hammond *et al. vs.* Walter S. Johnston, receiver, *et al.* Citation. Filed April 4th, 1888. H. W. Ewing, clerk, by Rowan Ray, D. C.

c UNITED STATES OF AMERICA, *ss:*

[Seal of the United States Circuit Court for the Western District of Missouri, Central Division.]

The President of the United States to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the October term, 1887, thereof, between David L. Hammond, Charles L. Hammond, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, James L. D. Morrison, Edward C. Smith, William F. Barsh and Augusta G. Barsh, his wife; Thomas M. Price and Catherine V. Price, his wife; Joseph S. McKie and Anna W. McKie, his wife, and Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, and Laura Virginia Briquet, by their curator, E. H. Hesse, plaintiffs, and Walter S. Johnston, receiver of the National Bank of the State of Missouri, and Clara A. Baker, defendants, a manifest error

hath happened, to the great damage of the said plaintiffs, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20th day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, central division, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri, Central Division.

Allowed by—
ELIJAH H. NORTON,
Chief Justice.

d [Endorsed:] No. —. United States circuit court, western district of Missouri, central division. David L. Hammond *et al. vs.* Walter S. Johnston, receiver, *et al.* Writ of error to the supreme court of the State of Missouri. Returned and filed 4th day of April, 1888. H. W. Ewing, clerk, by Rowan Ray, D. C.

Return to Writ.

STATE OF MISSOURI, *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Seal Supreme Court of Missouri.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 3d day of September, A. D. 1888.

HENRY W. EWING, *Clerk,*
By ROWAN RAY, *D. C.*

In the Supreme Court of the State of Missouri, October Term, 1887.

DAVID L. HAMMOND *et al.*, Plaintiffs in error,
vs.
WALTER S. JOHNSTON, Receiver, *et al.*, Defendants in Error.

To the clerk of the circuit court of the United States in and for the central division of the western district of Missouri:

The undersigned, attorneys for the plaintiffs in said cause, respectfully represent that in the above-entitled cause, wherein the said supreme court of the State of Missouri gave judgment for the aforesaid defendants, the said court committed errors, in this:

1st. The said court erroneously held and decided that there was, on the facts appearing in the record as to the location of New Madrid certificate No. 161 (under which location said plaintiffs claim said land), an equitable title to the land in controversy in Samuel Hammond (under whom plaintiffs claim) on the eight- of October, 1823, which could be levied upon by the sheriff and sold on execution against said Hammond, issued on a judgment against said Hammond rendered on the 21st of May, 1823, and that by such levy and sale an equitable title to said land passed from said Hammond to the purchasers under said execution sale, and under which purchasers defendants claim, whereby a grievous error against plaintiffs was committed by said court, for the reason that the United States survey No. 2500, made under said certificate No. 161, was not returned to the recorder of land titles for the Territory of Missouri till January 8th, 1833, and recorded Feb'y 2nd, 1833, said survey having been made on the 23d of June, 1819, on an application made on the 16th of June, 1818, under the act of Congress of Feb'y 17th, 1815, called the New Madrid act.

2nd. The said court erroneously decided that the "patent" issued on said land, as appears by the record, was operative from its date, on the 30th of August, 1859, and took the fee-simple title out of the United States on said 30th of August, 1859, though the decision of the Land Commissioner at Washington was in due time appealed from to the Secretary of the Interior, and though said Secretary's decision to issue the patent was not made until November 12th, 1860, as appears by his opinion in the record of the case. By which erroneous decision of said court the interest derived from Samuel E. Hammond, an original plaintiff, was held to be barred by the statute of limitation.

3rd. That said court erroneously gave judgment in said case for the defendants, whereas judgment should have been given for the plaintiffs. Wherefore plaintiffs pray that said judgment be reversed and judgment rendered for the plaintiffs; and to that end the plaintiffs pray that a writ of error out of the Supreme Court of the United States, under the seal of said court, may issue to the honorable the judges of the supreme court of the State of Missouri, commanding said court to send a duly certified copy of the records and proceedings in the case aforesaid to the Supreme Court of the United States

at Washington, D. C., so that the same may be at Washington on the 2d Monday of October, 1888.

D. T. JEWETT,
HENRY W. DENISON,
Att'ys for Pl'ffs in Error.

[Endorsed:] Filed April 4, 1888. H. W. Ewing, clerk, by Rowan Ray, D. C.

1 STATE OF MISSOURI, *ss:*

Be it remembered that heretofore, to wit, on the 3d day of October, 1885, there was filed in the office of the clerk of the supreme court of the State of Missouri a transcript in the words and figures following, to wit:

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

Be it remembered that heretofore, to wit, on the 13th day of June, 1874, there was filed in the office of the clerk of the circuit court of St. Louis county a petition in words and figures following, to wit:

Petition.

In the Circuit Court of St. Louis County, Missouri, October Term, 1874.

DAVID L. HAMMOND, SAMUEL E. HAMMOND, CHARLES L. HAMmond, Sarah G. Hammond, Mary A. Washington, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, James L. D. Morrison, William F. Barsh and Augusta G. Barsh, His Wife; Thomas M. Price and Catharine V. Price, His Wife; Joseph S. McKie and Anna W. McKie, His Wife, and Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, Laura Virginia Briquet, Minors, by Their Curator, E. H. Hesse, Plaintiffs,

vs.

LEVIN H. BAKER and CLARA A. BAKER, His Wife, Defendants.

The plaintiffs state that on the first day of June, A. D. 1874, they were lawfully entitled to the possession of the following-described parcel of land or premises situated and being in the county of St.
2 Louis, Missouri, in township forty-five (45) north, in range seven (7) east, of the fifth principal meridian, and known and described as United States survey number two thousand five hundred (2500), surveyed under New Madrid certificate number one hundred and sixty-one (161) in the name of Joseph Hunot or his legal representatives.

And, being so entitled to the possession thereof, the defendants afterwards, on the second day of June, A. D. 1874, entered into said premises and unlawfully withhold from the plaintiffs the possession thereof, to their damage in the sum of five hundred dollars.

Plaintiffs further aver that the defendants were in the possession of the above-described premises or parcel of land at the time of the commencement of this suit, and that the monthly rents and profits of the premises occupied by defendants are fifty dollars.

Wherefore plaintiffs ask judgment against defendants for the possession of the premises, and for the damages for the detention thereof, and for the monthly rents and profits thereof, and for costs.

D. T. JEWETT,
S. N. HOLLIDAY,
Attorneys.
J. L. D. MORRISON, *Pro Se.*

Statement of Issuance of Summons and Return.

Upon the filing of which petition a summons issued, directed to the sheriff of St. Louis county, and by said sheriff returned executed on the 22d day of June, 1874.

And afterwards, to wit, at the December term, 1879, of the circuit court — city of St. Louis, the following proceedings were had in said cause, to wit:

W. S. Johnston Made a Party Defendant.

SATURDAY, *December 13th*, 1879.

DAVID L. HAMMOND *et al.*
vs. } 30072.
3 LEVIN H. BAKER *et al.*

Now, at this day, come said parties, by their respective attorneys, and agreeing and consenting thereto, it is ordered by the court that Walter S. Johnston, as receiver of the National Bank of the State of Missouri, be, and he is hereby, admitted as a codefendant in the cause and permitted to defend the same as a party defendant.

And afterwards, to wit, on the 15th day of March, 1882, by leave of court the following amended answer was filed in said cause in words and figures following, to wit:

Amended Answer.

CITY OF ST. LOUIS, }
State of Missouri, } *ss:*

Room 2, Case No. 30072.

In the Circuit — of the City of St. Louis, February Term, 1882.

DAVID L. HAMMOND, JAMES L. D. MORRISON, *et al.*, Plaintiffs,
vs.
WALTER S. JOHNSTON, Receiver of the National Bank of the State of Missouri; Levin H. Baker and Clara Baker, His Wife, Defendants.

Now, at this day, come the defendants in the above-entitled cause,

and, the leave of the court first being had and obtained, file this their amended answer, and deny each and every allegation in plaintiffs' petition contained except as hereinafter specifically admitted.

For a further answer these defendants deny that they are in possession of all of united survey No. 2500, located under New Madrid certificate No. 161, as charged in plaintiffs' petition herein, but say they are in possession of a part of said survey only, to wit, of lot No. fifty (50) of Peter Lindell's Second (2nd) Addition to the city of St. Louis, bounded northerly by Maryland avenue, easterly by Taylor avenue, southerly by Lindell avenue, and westerly by Lake
4 avenue; and these defendants say that for more than forty years prior to the 13th day of June, 1874 (the day this suit was brought), they and their grantors and those under whom they claim have been in the actual, open, notorious, uninterrupted peaceable, exclusive, and adverse possession of said lot No. fifty (50) of Peter Lindell's Second Addition to the city of St. Louis, claiming title thereto against all the world, and that the title of plaintiffs, if any they ever had, is barred by the statute of limitations and vested in these defendants by virtue of such possession.

And, further answering, these defendants say that neither the plaintiffs herein nor their ancestors, predecessors, grantors, or any other person under whom they claim were seized or possessed of said lot No. fifty (50) of Peter Lindell's Second (2nd) Addition to the city of St. Louis within ten years next preceding the commencement of this suit; wherefore the cause of action of plaintiffs, if any they ever had, is barred by the statute of limitations in such cases made and provided.

And, further answering, these defendants state and charge the fact to be that each and all of the heirs of Samuel Hammond, deceased, who are parties plaintiff to this suit have entered into agreements with one James L. D. Morrison, also a party plaintiff herein, by the terms of which the said Morrison has bound himself, at his own proper costs and charges, to employ counsel and prosecute all suits in the courts of Missouri necessary to recover from these defendants and others the possession of United States survey No. 2500, located under New Madrid certificate No. 161, within which said lot of ground herein sued for is located and of which it is a part, and to pay all necessary fees, charges, and costs of court that may be incurred in the prosecution and maintenance of such suits, both in his own name and the names of the other plaintiffs, not only
5 for the interest which defendants charge is reserved to *him* by said agreements (the extent of which interest is unknown to defendants), but also for the interest which defendants charge is retained by the said parties plaintiffs, heirs of Samuel Hammond, deceased (the extent of which said interest is also unknown to defendants).

And these defendants say that, in consideration of said unlawful agreement, the said parties plaintiff, heirs of Samuel Hammond, deceased, have made and delivered divers and sundry deeds to the said Morrison (the exact nature and extent of which are unknown to defendants), by which they have conveyed to him, the said Mor-

rison, certain interests (unknown to defendants) in the land herein sued for, and these defendants say that said deeds are absolutely void and of no effect whatever as against these defendants, because the same were obtained by the said Morrison from the said heirs of Samuel Hammond, deceased, in consideration of said unlawful agreements to maintain and prosecute such suits at his own proper costs and charges by the said Morrison in the name of himself and said Hammond heirs, plaintiffs herein, for the recovery of said lands, and that this suit now pending and being prosecuted against these defendants is one of the suits so unlawfully and against public policy agreed by the said Morrison with the said Hammond heirs, plaintiffs herein, to be maintained and prosecuted, and in consideration of the maintainance and prosecution of which at his, the said Morrison's, own proper costs and charges the said conveyances to said Morrison by the said Hammond heirs, plaintiffs herein, were made.

And they say at the time of making such champertous agreements and conveyances and at the time of instituting this suit thereon these defendants were in the notorious, actual, and exclusive, peaceable, and adverse possession of the land herein sued for, to wit, said lot of ground No. fifty (50) of Peter Lindell's
6 Second (2nd) Addition to the city of St. Louis, and they and those under whom they claim had been in such possession, continuous in character, claiming for themselves and against all others as owners of said lands, for more than forty years before the making of said champertous agreements and conveyances and the instituting of this suit, and the said plaintiffs, heirs of Samuel Hammond, deceased, and the said James L. D. Morrison had personal knowledge thereof at the time of their making said champertous agreements and deeds and instituting this suit thereon.

These defendants therefore say that said agreements and conveyances were against public policy and subversive of the peace and good order of society and oppressive and injurious to the rights of defendants, and that the said deeds made under said champertous agreements by the said parties plaintiff, heirs of Samuel Hammond, deceased, are absolutely void and of no effect and vested no title in the said Morrison as against these defendants, and that they are entitled to judgment in this action against said Morrison by reason of his having thus unlawfully obtained his title.

And they say it is against public policy, the best interests of society, and the rights of these defendants that the said parties plaintiff, heirs of Samuel Hammond, deceased, should be allowed to prosecute this suit against these defendants under said champertous agreements with the said Morrison, and that their said suit should not be entertained, but should be dismissed by the court, and that they are entitled to judgment in their favor and as against said heirs of Samuel Hammond, deceased, parties plaintiff herein, because this suit is being prosecuted for them by the said Morrison under said unlawful agreements.

And, further answering, these defendants state and charge the fact to be that one of the plaintiffs in this suit, to wit, Mary A. Washing-

ton, claimed to be entitled as one of the heirs of Samuel Ham-
7 mond, deceased, to an undivided one-fifth ($\frac{1}{5}$) part of interest of the land described in the plaintiffs' petition herein; that prior to the month of May, 1874, she was informed by the said James L. D. Morrison, a plaintiff herein, that she had a lawful right to recover possession of said land, and was solicited by him, the said Morrison, to employ him to enter suit for the recovery of the possession of the same on a contingency of part of the land if recovered; and that subsequently, to wit, on the 16th day of said month of May, 1874, she entered into an agreement with the said James L. D. Morrison whereby he, the said Morrison, bound himself in the sum of ten thousand dollars (liquidated damages) unto her, the said Mary A. Washington, the condition of which obligation was such that whereas she "has employed the said James L. D. Morrison to institute and prosecute suits for the recovery of United States survey No. 2500, located under the New Madrid certificate No. 161, at his own proper costs and charges, and in consideration of the services to be rendered by the said James L. D. Morrison in that behalf, has executed and delivered to the said James L. D. Morrison her certain quitclaim deed, bearing even date with these presents, to the two-thirds of her undivided interest in said land.

That the said James L. D. Morrison shall institute and prosecute said suits on or before the thirteenth day of June, 1874, as well for the interest so conveyed to him as hereinbefore stated as that remained by the said Mary A. Washington in said above-described lands, at his entire costs and charges, and shall save the said Mary A. Washington free, and shall keep her indemnified against liability for fees, costs, and charges to be expended in and about the bringing and prosecution of the same;" that on the same day this unlawful agreement was made between the said Mary A. Washington and the said Morrison, to wit, on the said 16th day of May, 1874,
she conveyed to him by her deed of release and quitclaim of
8 that date two-thirds of her said undivided one-fifth ($\frac{1}{5}$) interest in said lands, which is equivalent to an undivided four-fifteenths ($\frac{4}{15}$) part of the whole land, in consideration of and as provided by said unlawful agreement, and these defendants say that the said conveyance thus made by the said Mary A. Washington to the said James L. D. Morrison on said 16th day of May, 1874, and on the title conveyed by which he sues in this case is absolutely void and of no effect as against these defendants, because the same was made in consideration of said unlawful agreements to prosecute and maintain, at his own proper costs and charges, by the said Morrison, suits in the name of himself and of the said Mary A. Washington for the recovery of the lands named and described in the plaintiff's petition and described in said deed, and that the suit now pending and being prosecuted against these defendants is one of the suits so unlawfully and against public policy agreed by said Morrison with the said Mary A. Washington to be maintained and prosecuted, and in consideration of the maintenance and prosecution of which the said conveyance to said Morrison by said Mary A. Washington was made.

They therefore say that said deed so made was and is intended to convey to said Morrison a part of the land in dispute between plaintiffs and defendants in consideration that said Morrison would employ counsel and prosecute suits and pay all necessary fees, charges, and costs of court that might be incurred in the prosecution and maintainance of such suits, both in his own name for his said interest acquired from her and in the name of said Mary A. Washington for the said interest retained by her, in the courts of Missouri, to recover from these defendants and others the possession of United States survey No. 2500, located under New Madrid certificate No. 161.

And they say that at the time of the making of such champertous agreement and conveyance and at the time of instituting
9 this suit thereon these defendants were in the actual, exclusive, peaceable, and adverse possession of the land herein sued for, and they and those from whom they claim had been in such possession, continuous in character, claiming for themselves and against all others as owners of said land, for more than forty years before the making of said champertous agreement & deed, and the said Morrison and the said Mary A. Washington had personal knowledge thereof at the time of making said agreement and deed and instituting this suit thereon that said agreement was against public policy and subversive of the peace and good order of society and oppressive and injurious to the rights of these defendants, and that the said deed made under the said champertous agreement is absolutely void and of no effect and as against these defendants vested no title in the said Morrison.

And they say that it is against public policy and the best interests of society and the rights of these defendants that the said Morrison should be allowed to prosecute this suit for the said undivided four-fifteenths ($\frac{4}{15}$) part of the said land herein sued for thus claimed by him through his said deed from said Mary A. Washington, but that this suit should be dismissed by the court both as to the interest thus acquired by the said Morrison from the said Mary A. Washington, and also as to the said undivided one-fifteenth interest therein retained as aforesaid by the said Mary A. Washington, and that these defendants are entitled to judgment in their favor and against said plaintiffs, Morrison and Washington, for said undivided interests in said land thus held by them.

And, further answering, these defendants say that the aforesaid deed made on the 16th day of May, 1874, by the said Mary A. Washington to the said James L. D. Morrison was absolutely void and of no effect and passed no title to the said Morrison, because the same was made in consideration of said unlawful agreement
10 to maintain and prosecute at his, the said Morrison's, own proper costs and charges suits (in the name of himself and the said Mary A. Washington) for the recovery of the land named and described in the plaintiffs' petition herein and described in said deed; and subsequently, to wit, on the 5th day of February, 1881, the said Mary A. Washington, one of the plaintiffs herein, by her certain deed of date said last-named day and year, conveyed to one Sylvester J. Fisher all of her title in and to the land herein sued

for which these defendants charge to be an undivided one-fifth (1/5) part or interest of all of said land; that afterwards, on the eleventh (11th) day of April, 1881, the said Sylvester J. Fisher & Alice, his wife, by their certain deed of date said last-named day and year, conveyed to Robert B. Wade all their right, title, and interest in said land acquired by said deed from Mary A. Washington; that on the eleventh (11th) day of March, 1882, the said Robert B. Wade and Belle U. B., his wife, by their deed of that date conveyed to one of these defendants, Walter S. Johnston, receiver of the National Bank of the State of Missouri, all of their right, title, and interest in and to said lot No. fifty (50) of Peter Lindell's Second (2nd) Addition to the city of St. Louis, being the same land herein sued for.

Wherefore these defendants say that whatever title, if any, *of* the said plaintiff, Mary A. Washington, may have had in the said land herein sued for was by virtue of the aforesaid conveyances vested in said Walter S. Johnston, receiver, and that they are therefore entitled to judgment in their favor and as against said Mary A. Washington and said James L. D. Morrison for an undivided one-fifth (1/5) part or interest of all of the land herein sued for.

And, further answering, these defendants state and charge the fact to be that long prior to the institution of this suit, to wit, on or about the 20th day of June, 1873, the said Mary A. Washington executed and delivered her certain deed of date said last-
11 named day and year to one John F. Darby, whereby she conveyed to him, the said Darby, all her right, title, and interest in United States survey No. 2500, located under New Madrid certificate No. 161 (of which the land herein sued for is a part), so that on the 16th day of May, 1874, the time she conveyed to the said James L. D. Morrison as aforesaid, and on the thirteenth day of June, 1874, the time this suit was brought, she had no title whatsoever to said land, having already, as above stated, parted with all her interest therein to the said Darby on the said 20th day of June, 1873; and these defendants say that the aforesaid conveyance, dated May 16th, 1874, from the said Mary A. Washington to the said James L. D. Morrison, was a deed of mere quitclaim purporting to pass to the said Morrison the present right of the said Mary A. Washington in and to said land, and they say that at that time she had no right therein; and they further say that the said Morrison never gave the said Mary A. Washington any consideration whatsoever for the making of the said deed to him, and that the sole inducement thereof was the aforesaid unlawful agreement made between them by which he was to prosecute said suits at his own proper costs and charges; and they say at the time and long previous to the time the said Morrison received his deed of quitclaim from the said Mary A. Washington to the said land she told him in person and he otherwise well knew and had notice and knowledge of the fact that she had already as aforesaid conveyed all of her interest in said land to the said Darby, and that the said Morrison took his said deed from her with full knowledge of the fact that she had previously made and delivered said deed to Darby and had nothing

ft to convey to him, the said Morrison, and that he assumed all
sk on account thereof.

And defendants, for further answer, say that the plaintiffs, in
rder to recover in this case, rely on the legal title alleged to have
been vested in one Samuel Hammond in 1823, which title
2 they, the said plaintiff-, claim has passed to them by inher-
itance and by subsequent conveyances from the legal repre-
entatives of said Hammond to them.

Defendants say that whatever title, legal or equitable, was then or
t any time vested in said Samuel Hammond was sold on the 8th
lay of October, 1823, under and by virtue of a certain judgment and
xecution by John K. Walker, then sheriff of St. Louis county, Mis-
ouri, and the same was, on November 4th, 1823, by him, the said
heriff, conveyed, as provided by law in such cases, to Richard Relfe
nd Beverly Chew, the purchasers at said sheriff sale; and thereupon
he said Relfe and Chew became vested with all the title previously
wned in said land by Samuel Hammond.

And defendants say that on the 20th day of March, 1840, the said Relfe and Chew conveyed by general warranty all their right in said land thus acquired to Peter Lindell, from whom these defendants claim by inheritance and by mesne conveyances.

And they say that Peter Lindell, from the date of said deed of Relfe and Chew, in March, 1840, held actual, adverse, open, notorious, and hostile possession of said lands against the said Hammond and the said Relfe and Chew and against all others under and by virtue of said deeds from Sheriff Walker and from Relfe and Chew up to October, 1861, when he died, and that defendants have in the same manner held like adverse possession thereof since 1861 as legal representatives of said Lindell.

Wherefore these defendants say that they are entitled to judgment in their favor and against said Mary A. Washington and said James L. D. Morrison for the said undivided one-fifth ($\frac{1}{5}$) interest in said land thus claimed jointly by said James L. D. Morrison and said Mary A. Washington.

Wherefore, having fully answered, these defendants pray judg-
ment in their favor and against each and all of the parties
13 plaintiff in this cause, and ask to be hence dismissed without
day and with their costs.

J. B. HENDERSON,
EVANS CASSELBERRY,
JAMES M. LEWIS,
Attorneys for Defendants.

And afterwards, to wit, on the 18th day of March, 1882, the following reply to said answer was filed in said cause in words and figures following, to wit:

Reply to Amended Answer.

In the Circuit Court, City of St. Louis, Feb. T., 1882.

DAVID L. HAMMOND *et al.*, Pl'ffs,
vs.
LEVIN H. BAKER, WALTER S. JOHNSTON, Receiver, and Others, Def'ts.

Replication of pl'ffs to def'ts' amended answer.

And now come pl'ff's and, for replication to def'ts' amended answer, deny each and every material allegation in said answer, except the allegations that def'ts are in the actual possession of said lot No. 50, and except that pl'ff Morrison derived his title from the heirs of Samuel Hammond by good and valid deeds, and that said pl'ff, Mary A. Washington, did, on or about the 5th day of February, 1881, convey all the right, title, and interest (if she then had any) she had in said land to one Fisher, and that said Fisher, on or about the 11th of April, 1881, conveyed the same to said Wade, and that said Wade, on or about the 11th of March, 1882, *said Wade* conveyed the same to def't Johnston. Each and all other allegations in said amended answer are hereby denied.

D. T. JEWETT,
Att'y for Pl'ffs.

14 And at the October term, 1882, of the circuit court, city of St. Louis, the following proceedings were had in said cause, to wit:

Dismissal as to Mary A. Washington.

TUESDAY, *October* 10*th*, 1882.

DAVID L. HAMMOND *et als.*
vs. (30072.)
L. H. BAKER & *al.*

And now, at this day, come D. T. Jewett, Esq., attorney for plaintiffs, and, by leave of court, dismisses out of this suit Mary A. Washington, one of the plaintiffs.

And at the October term, 1883, of the circuit court, city of St. Louis, the following proceedings were had in said cause, to wit:

Death of L. H. Baker Suggested.

FRIDAY, *November* 9*th*, 1883.

DAVID L. HAMMOND *et als.*
vs. (30072.)
LEVIN H. BAKER *et als.*

Now, at this day, comes Walter S. Hammond, receiver of the National Bank of the State of Missouri, one of the defendants herein,

by attorney, and suggests to the court the death of Levin H. Baker, another defendant in this cause.

And at the April term, 1885, of the circuit court, city of St. Louis, the following proceedings were had in said cause, to wit:

E. C. Smith and J. L. D. Morrison Made Plaintiffs.

MONDAY, *May 25th*, 1885.

DAVID L. HAMMOND *et als.*
vs.
WALTER S. JOHNSTON, Rec'r, &c., & *al.* } (30072.)

Now, at this day, the court, being fully advised of and concerning the motion heretofore filed herein by Edward C. Smith to be made a party plaintiff herein, being satisfied that he is the sole grantee, since the commencement of this suit, of all the right, title, and interest of Sarah G. Hammond, doth order that he be, and is hereby, substituted as party plaintiff for said Sarah G. Hammond, one of the plaintiffs herein; and, being satisfied that he is grantee, with James L. D. Morrison, of all right, title, and interest of Samuel E. Hammond, doth order that said Smith and said Morrison be, and they are hereby, substituted as parties plaintiff for said Samuel E. Hammond, one of the plaintiffs herein, and that he also be made a party plaintiff, as grantee of part of the interests of said James L. D. Morrison, one of the plaintiffs herein.

And at the June term, 1885, of the circuit court, city of St. Louis, the following proceedings were had in said cause, to wit:

Judgment.

MONDAY, *June 1st*, 1885.

DAVID L. HAMMOND, EDWARD C. SMITH, CHARLES L. HAMMOND, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, James L. D. Morrison, William F. Barsh and A-gusta G. Barsh, His Wife; Thomas M. Price and Catharine V. Price, His Wife, Joseph S. McKie and Anna W. McKie, His Wife, and Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, Laura Virginia Briquet, by Their Curator, E. H. Hesse,
vs.
LEVIN H. BAKER and CLARA A. BAKER, His Wife, and WALTER S. JOHNSTON, Receiver of the National Bank of the State of Missouri. } 30072.

It appearing to the court that the death of Levin H. Baker, one of the defendants herein, was suggested by the plaintiffs at the October term, 1883, of this court, and that the representatives of said deceased have not been made parties to this suit according to the

statute in such cases, and that more than three regular terms of this court have been held since the suggestion of death as aforesaid and since the entry of said order, it is ordered that this action abate as to said Levin H. Baker and as to any and all interest therein of his representatives or successor therein, and that this cause shall proceed against the survivors in the cause; and thereupon, this cause coming on for hearing, said parties, waiving a jury, submit this cause to the court upon the evidence and proofs adduced, and the court, having duly heard and considered the same, doth find the issues herein joined in favor of the defendants. It is therefore considered by the court that the plaintiffs take nothing by their suit in this behalf, but that the defendants go hence without day and recover of the plaintiffs and S. D. Cabanne, the surety in the
16 bond for costs herein, their costs and charges herein expended, and that execution issue therefor. Instructions filed.

Motion for New Trial Filed.

THURSDAY, *June 4th*, 1885.

DAVID L. HAMMOND *et al.*
vs.
W. S. JOHNSTON, Rec'r, &c., *et al.* } (30072.)

Plaintiffs' motion for a new trial filed.

Motion for New Trial Overruled.

WEDNESDAY, *June 10th*, 1885.

D. L. HAMMOND *et al.*
vs.
W. S. JOHNSTON, Rec'r, &c., *et al.* } (30072.)

It is ordered by the court that the motion heretofore filed herein for a new trial be overruled.

Bill of Exceptions Filed.

SATURDAY, *June 20th*, 1885.

DAVID L. HAMMOND *et al.*
vs.
WALTER S. JOHNSTON, Rec'r, &c., & *al.* } (30072.)

Now, at this day, the plaintiffs come, by their respective attorney, and present to the court their bill of exceptions, which is allowed, signed, sealed, and filed and made a part of the record herein.

Affidavit for Appeal Filed and Allowed. Bond Filed & Approved.

MONDAY, *June* 22*d*, 1885.

DAVID L. HAMMOND *et al.*
vs.
WALTER S. JOHNSTON, Rec'r, &c. } (30072.)

Now, at this day, the plaintiffs come, by attorney, and file herein an affidavit for appeal; and, on their motion, an appeal is allowed them to the supreme court of the State of Missouri from the judgment herein rendered. Bond approved by the court and filed.

Which bill of exceptions, affidavit, and bond for appeal are in words and figures following, to wit:

17 *Bill of Exceptions.*

In the Circuit Court of the City of St. Louis, Oct. 23rd, 1882.

DAVID L. HAMMOND *et al.*
vs.
LEVIN H. BAKER.

Be it remembered that on the 23rd day of October, 1882, the above-entitled cause came on for a hearing before the court (Judge Horner), when the following proceedings were had.

Mr. JEWETT (counsel for plaintiffs): The plaintiffs in this case are the heirs of Samuel Hammond and James L. D. Morrison. I will now put in the different papers as they appear on your honor's abstract. First. This claim was first laid before the old board of commissioners appointed under the act of 1805 and 1807, and it reads, "Thursday, the board met pursuant to adjournment, January 31st, 1811," etc.

Proceedings of Board of Commissioners, Jan'y 31*st*, 1811.

"THURSDAY, *January* 31*st*, 1811.

Board met.

Present: John B. C. Lucas, Clement B. Penrose, Frederick Bates, commissioners.

Joseph Hunot, claiming 800 arpens of land situate portage of River St. Francois, district of New Madrid, produces to the board a permission to settle from Francois Lesieur, dated 20th June, 1802.

The following testimony in the foregoing claim, taken at New Madrid June 20th, 1808, by Frederick Bates, commissioner, by authority from the board.

* * * * * * *

It is the opinion of the board that this claim ought not to granted.

Board adjourned till Saturday next, ten o'clock a. m.

JOHN B. C. LUCAS.
CLEMENT B. PENROSE.
FREDERICK BATES.

18 Office of the U. S. recorder of land titles.

ST. LOUIS, *December 18th*, 1873.

This is to certify that the above is truly copied from page 105 a book marked 'Commissioners' Minutes No. 5' of the proceedin of the old or first board of commissioners appointed under the a of Congress of the 2nd March, 1805, which book is up to this day file in this office.

STILLMAN O. FISH, *Recorder*."

The testimony was taken June 20th, 1808, but I will not read t testimony. That was rejected by the old board of commissioners.

Mr. HENDERSON (counsel for the defendant-): It is understood the papers are objected to.

(Ocjection overruled, and defendants excepted at the time t paper was read.)

The COURT: This claim, you say, was rejected by the old board

Mr. JEWETT: Yes; and confirmed by Bates afterwards. After th claim, as this paper shows, was filed before the old board, then Josep Hunot conveys to Joseph Vandenvenden by a deed dated the 12 of May, 1810, by and between Joseph Hunot, district of New Madri Territory of Louisiana, and Joseph Vandenvenden, etc.

On the 6th day of June, in the year 1815, received for and t same day recorded the following deed of conveyance:

Deed.

Joseph Hunot
to
Joseph Vandenbenden.

This indenture made this twelfth day of May in the year o thousand and eight hundred and ten by and between Joseph Hun of the district of New Madrid in the Territory of Louisiana *Territo* of the one part, and Joseph Vandenvenden of the district and Terr tory of the other part, witnesseth that he the said Joseph Hunot f and in consideration of the sum of one hundred dollars to him in han paid the receipt whereof he does hereby acknowledge an
19 him the said Joseph Vandenbemden for the same exonerate discharged and acquitted, has this day granted, bargaine and sold and do by these presents grant, bargain and sell *allienn* release, convey and confirm to him the said Joseph Vendenbemde all that tract of land containing eight hundred arpents more or le situated and lying in said district of New Madrid at the Big Portag

so called near the northeast fork of the River St. Francis on the N. W. bank thereof and opposite the mouth of the creek called the Bay about twenty miles southwestwardly from the town of New Madrid being the headright *right* or the settlement claim of the said Joseph Hunot under the second section of the act of Congress respecting such claims, claimed by him the said Joseph Hunot before the board of commissioners &c, which said tract of eight hundred arpents of land more or less is hereby granted bargained and sold to the said Joseph Vandenbemden his heirs and assigns. To have and to hold forever, and moreover he the said Joseph Hunot for himself and his heirs &c, covenants and agrees to and with the said Joseph Vandenbemden his heirs and assigns to warrant and defend the said tract of land above sold, to him the said Joseph Vandenbemden from the lawful claim or claims of any person claiming the same through by or under him the said Joseph Hunot, but should the claim not be held good by Government and the same or any part of the said tract should not be granted, he the said Joseph Vandenbemden to loose the same and he the said Joseph Hunot to be in nowise responsible therefor.

In witness whereof the said Joseph Hunot has hereunto affixed his seal and subscribed his name the date above.

JOSEPH his x mark HUNOT. [SEAL]

Test.
JOSH HUMPHREYS.
MARTIN *RTHOED.*

LOUISIANA TERRITORY, *District of New Madrid,* } *sct:*

20 This day the within-named Joseph Hunot personally appeared before me, Joshua Humphreys, a justice of the peace in said district, and acknowledged the within instrument of writing to be his act and deed for the purpose therein expressed, and all the lands therein mentioned and intended to be sold *was* thereby granted, bargained, and sold to *to* the therein-named Joseph Vandenbemden, his heirs and assigns, to have and to hold forever.

Given under my hand and private seal this twelfth day of May, 1810.

JOSH. HUMPHREYS, *J. P.* [SEAL.]

To Frederick Bates, Esq., recorder of land claims within & for the *the* Territory of Missouri.

SIR: By virtue of the within transfer & right of location, I do locate the quantity of land which I am entitled to westwardly of the tract granted to Joseph Estu, the county of New Madrid, and adjoining the lands of Charles Crabin southwardly.

New Madrid, May 9th, 1815.

JH. VANDENBEMDEN.

STATE OF MISSOURI, } ss:
County of New Madrid, }

I, John A. Mott, clerk of the circuit court and *ex officio* recorder within and for the county and State aforesaid, do hereby certify the foregoing to be a full, true, and complete copy of a deed and of the record thereof from Joseph Hunot to Joseph Vandenbemden, together with the certificate of acknowledgment, as the same now appears of record in Book No. six (6), one of the records of land titles of said county, at page six (6).

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at office, this 8th day April, A. D. 1874.

JOHN A. MOTT,
Clerk & ex Officio Recorder.

21 STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd, 1874, at 10.40 a. m., and is duly recorded in Book 491 at page 434. Witness my hand and official seal at same date.

[SEAL.] W. C. KENNETT, *Recorder.*

This is dated 1810, about one year before the old board rejected the claim. That rejection was made in 1811.

We next offer what is known as the confirmation by Recorder Bates under the act of 1812–'13. This confirmation is found in volume three American State Papers. Bates confirms this survey granting 640 acres. And I also offer the American State Papers which are noted on your honor's abstract and which are an exact copy of these.

The COURT: What is the date of the confirmation?

Mr. JEWETT: November first, 1815. That is the date of his report. It was confirmed, I suppose, some time before.

The COURT: Your abstract calls for it under the act of 1816.

Mr. JEWETT: The law provided Judge Bates should pass on these cases, and he passed on all these old claims, which were acted on by the old board and rejected.

The COURT: What is the date of his taking action on this claim?

Mr. JEWETT: It appears, as near as you can get at it, his action was November first, 1815. He reported in 1815 favorable on this claim when it was confirmed, with a great many others, under the act of 1816. This paper is headed "Opinions of the recorder of land titles of Missouri Territory as to claims under the act of the 13th of June, 1812, and proven before the first of January,
22 1814, as provided by the act of the 3rd of March, 1815," etc.

Confirmation by Recorder Bates Nov. 1st, 1815.

"Opinions of the recorder of land titles for Missouri Ter'y as to claims entered under act of 13th June, 1812, & proven before 1st

Jan'y, 1814, as provided by the act of 3rd March, 1813, comprehending also the claims in the late district of Arkansas which by act of 2nd Aug., 1813, were permitted to be entered until 1st Jan'y, 1814, and proven until 1st July, 1814, together with the extensions of quantity provided by 4 sec. of the act of 3rd March, 1813, and confirmations under the act of 12th April, 1814:"

Opinions of the Recorder of Land Titles.

Warr't or order of survey.	Survey.	Notice to the recorder.	Quantity of land.	Where situated.	Poss'n, inhab. or cult.	Opinions of the recorder.
20th June, 1802, by F. Lessieur.	.....	Joseph Hunot..	800 arpens...	Port'e R. St. Frs., N. Madrid.	Poss'n, inh'e, c u l t. fr 1802 to 1808.	Granted 640 acres E 27; 5, p. 105, Rep. 168.

Office of the U. S. recorder of land titles.

ST. LOUIS, *December 24th*, 1873.

This is to certify that the above is truly copied from page 13 of Book No. 1, except the caption, which is truly copied from page 1 of the same book, being one of the five small books with the following endorsement on the first and also on the fifth book, believed to be in the handwriting of Frederick Bates, to wit: "These five small books are originals and in the proper handwriting of the undersigned, being his decision of land claims since the adjournment of the late board. They were arranged & fairly transcribed for report to the Com. of the Gen'l L. Office, but not yet recorded in the books because they have no authority till sanctioned by Government. St. Louis, Nov. 1st, 1815. Frederick Bates, recorder of land titles." Which book is up to this day on file in this office.

STILLMAN O. FISH, *Recorder.*

23 I now offer a deed from Joseph Vandenvenden, of New Madrid, dated the fourth of November, 1815, to Rufus Easton, of St. Louis:

Deed of Joseph Vaden Benden to R. Easton.

OFFICE OF THE RECORDER OF DEEDS,
ST. LOUIS MO.

This deed made this fourth day of November in the year of our Lord one thousand eight hundred and fifteen by and between Joseph Vanden Benden of the town of New Madrid in the county of New Madrid and Territory of Missouri of the one part and Rufus Easton of the town of St. Louis in said Territory of the other part, witnesseth that the said Joseph Vanden Benden for and in consideration of one hundred and fifty dollars to him in hand paid, by the said Rufus Easton the receipt whereof he does hereby confess and acknowledge and the said Rufus Easton from the payment thereof acquit & discharge hath granted, bargained, sold and assigned and by these presents doth grant bargain sell & assign unto the

said Rufus Easton and to his heirs and assigns forever six hundred and forty acres of land situate at a place called the portage bay of St. F*h*ancis in the county of New Madrid and Territory of Missouri aforesaid, and which tract of land has been confirmed to Joseph Hunot by the recorder of land titles for the Territory of Missouri, and by him granted to said Hunot at 640 acres of land portage bay St. Francis and which tract of land the said Joseph Hunot conveyed to the said Vandenbenden by deed dated 12th May 1810, and recorded 6th June 1815 in the records of New Madrid county under the description of eight hundred arpens of land situate at Big Portage so called near the northeast fork of the River St. Francis on the northwest bank thereof and opposite to the mouth of a creek called the bay being the head or settlement claim of the said Hunot and claimed before the board of land commissioners together with the right and privileges of locating the like quantity of land upon any of the public lands of the said Territory, the sale of which is
24 authorized by law (the same tract of land above described having been materially injured by earthquakes) according to the provisions of the act of Congress entitled "An act for the relief of the inhabitants of the late county of New Madrid in the Missouri Territory who suffered by earthquakes" approved February 17th 1815. The said tract of six hundred and forty acres of land having been materially injured by earthquakes. To have and to hold the said tract of land premises and privile*d*ges above granted unto him the said Rufus Easton and to his heirs and assigns and to his and their only use, benefit and behoof forever. And the better to enable the said Rufus Easton and his assigns to make a location as aforesaid the said Vandenbenden for the consideration above mentioned hath and by these presents doth nominate constitute and appoint the said Rufus Easton his lawful attorney-in-fact to make all such deeds and other writ*t*ings in his name and behalf as may be necessary to carry into effect the powers herein granted, for the use of him said Rufus Easton, with powers of substituting and appointing one or more attornies under him with the same authority hereby revoking all formers powers given to any other person, and the said Joseph Vandenbenden for the consideration above mentioned covenants and agrees with him said Rufus Easton his heirs and assigns that the right & title which the said Joseph Hunot has or ever had to said tract of land above granted is at the time of the delivery of these presents in him the said Joseph Vandenbenden and that he has not conveyed the same to any person. In all other respects the said Rufus Easton takes the right and title of the said Vandenbenden, to the same at his said Easton'- entire *wish* and haz*z*ard, so that if the tract of land or any part of the same shall not be ev*a*ntually granted by the United States Government. The said Rufus Easton his heirs or assigns are not to have an- recourse against the said Vandenbenden or his heirs for any part of
25 the consideration money above mentioned or other damage on account of this deed.

In testimony whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

JH. VANDEN BENDEN. (*ere*)

Signed, sealed, and delivered in presence of—

ROB'T G. WATSON.
RICHARD T. WATERS.

TERRITORY OF MISSOURI, }
Township of New Madrid. }

Personally appeared before me, a justice of the peace in and for the township aforesaid, the within-named Joseph Vanden Benden, and acknowledged the within deed of conveyance to be his own voluntcar act and deed for the purposes therein contained, and that he delivered the same to the said Rufus Easton.

Given under my hand, at New Madrid, the 4th day of November, 1815.

ROB'T G. WATSON, *J. P.*

For and in consideration of nine hundred and sixty dollars to me the undersigned Rufus Easton in hand paid by Robert Simpson of the town of St. Louis in the Missouri Territory, I do grant, bargain sell and assigns to him the said Robert Simpson his heirs and assigns the *the* within described tract of six hundred and forty acres of land with the privileges within mentioned and to warrant the titles to the said tract of land.

To have and to hold unto him the said Robert Simpson and to his heirs and assigns forever.

Dated, signed sealed & delivered the 4th day of November, 1815.

RUFUS EASTON. [SEAL.]

Signed, sealed, and delivered in presence of—

RICHARD J. WATERS.
ROB'T G. WATSON.

26 MISSOURI TERRITORY, }
New Madrid County, } *ss:*

Personally came before me, a justice of the peace of the township of New Madrid, in the said county of New Madrid, Rufus Easton, and acknowledged that he signed, sealed, and delivered the above conveyance from him to Robert Simpson as his voluntary act and deed for the purposes therein mentioned.

Given under my hand and seal, at New Madrid, this 4th day of November, 1815.

ROB'T G. WATSON, *J. P.*

TERRITORY OF MISSOURI, } *sct:*
County of New Madrid, }

On the 6th day of November, 1815, rec'd for and on the same day recorded the within deed of conveyance in Record Book No. 6 *and* pages 136, 137, 138, & 139, as is attested by Rich'd H. Waters, cl'k C. C., N. M. C.

For an- in consideration of nine hundred and sixty dollars to me the undersigned Robert Simpson in hand paid by Rufus Easton of the town of St. Louis in the Missouri Territory, I do grant, bargain, sell and assigns to him the said Rufus Easton his heirs and assigns forever the tract of land of six hundred and forty acres which is sold by and described in a deed of conveyance from Joseph Vanden Benden to Rufus Easton which said deed is dated the 4th day of November 1815 and is hereunto annexed, with the privileges in the said deed mentioned, and do warrant the title to the said Rufus Easton and to his heirs ans assigns forever.

Dated, signed, sealed and delivered this 26th day of July, 1816.

ROBERT SIMPSON. [SEAL.]

Signed, sealed, and delivered in presence of—
MORY JAMES.
EDW. BATES.

27 MISSOURI TERRITORY, } *ss:*
St. Louis County, }

Personally appeared before me, the undersigned, clerk of the circuit court of the county of St. Louis, Robert Simpson, whose name is subscribed to the above instrument, and acknowledged the same to be his act and deed, hand and seal, and that he delivered the same to the above-named Rufus Easton for the purposes therein mentioned.

[SEAL.] Given under my hand this twenty-seventh day of July, one thousand and sixteen.

M. P. LE DUC, *Cl'k.*

Recorded this twenty-seventh day of July, 1816.

M. P. LE DUC, *Cl'k.*

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

OFFICE OF RECORDER OF DEEDS.

I, the undersigned, recorder of deeds, certify that the foregoing is a true copy of an instrument in writing executed by J. Vanden Benden, together with the acknowledgment and date of filing and recording thereof, as fully as the same remains of record in my office, in Book F, page 41.

Witness my hand and official seal this 27th day of May, 1879.
[SEAL.] C. W. IRWIN, *Recorder.*

I next offer in evidence the certificate which Recorder Bates issued (page 17th of the record), "New Madrid certificate 161, issued by Recorder Bates to Joseph Hunot or his legal representatives, authorizing a relocation of 480 acres, dated August 12th, 1816:

No. 161.

Office of the recorder of land titles.

ST. LOUIS, *August 12th*, 1816.

28 *Certificate No.* 161, *to Joseph Hunot.*

I certify that a tract of six hundred and forty acres of land at portage of River St. Francis, in the county of New Madrid, which appears from the books of this office to be owned by Joseph Hunot (who has already received certificate No. 37, for 160 acres), has been materially injured by earthquakes, and that in conformity to the provision of the act of Congress of 17th February, 1815, the said Joseph Hunot, or his legal representatives, is entitled to locate four hundred and eighty acres, the balance under the limitations of the said act of Congress, on any of the public lands of the territory of Missouri the sale of which is authorized by law.

FREDERICK BATES.

Claim of Rufus Easton under Cert. No. 161.

To William Rector, Esquire, surveyor of the lands of the United States for the Territories of Illinois and Missouri:

Take notice that pursuant to the act of Congress entitled An act for the relief of the inhabitants of the late county of New Madrid who suffered by earthquakes, approved February 17th, 1815, I claim the right to locate four hundred and eighty acres of land mentioned in the certificate to you produced, being issued by the recorder of land titles for said territory, of a tract of six hundred and forty acres of land originally claimed by and confirmed to Joseph Hunot (who has already received a certificate for one hundred and sixty acres), which said quantity of land mentioned in said certificate I request you to locate and survey in Howard county, north of Missouri, beginning about one mile north of Elisha Roas' plantation at a red oak on a dividing ridge between Salt creek and Boone Femme, and running thence north three hundred and eleven and one-tenth perches; thence west two hundred and twenty-six and five-tenth-perches; thence south three hundred and eleven and one-tenth perches; thence east two hundred and twenty-six and five-tenth-perches to the place of beginning; or if it cannot be located and surveyed as aforesaid, then as follows, to wit: Beginning as afore-

said, thence north sixty-six chains thirty-three links; thence
29 west sixty-six chains thirty-three links; thence south sixty-six chains thirty-three links, and thence east to the place of beginning. Dated the 4th day of November, 1816.

RUFUS EASTON,
Assignee, Agent & Attorney of Claimant.

Endorsements: Class No. 37. Rec'd into this office the 14th day of November, 1816. Withdrawn in consequence of indefinite calls & interference.

Location by Rufus Easton under N. M. Cert. 161.

Rufus Easton, as the legal representative of Joseph Hunot, enters four hundred and eighty acres of land by virtue of a certificate No. 161, dated August 12th, 1816, issued by Fred'k Bates, Esqr., recorder of land titles, to wit: that part of fractional section seventeen, in township forty-five north and range seven east (the township in which St. Louis is situate), lying north of the Cul-de-Sac fields; fractional section eighteen, in the same township, and so much off on the east side of the unappropriated part of fractional section eight, of the same township, as will make the quantity.

St. Louis, June 16th, 1818.

JOSEPH C. BROWN,
For RUFUS EASTON.

STATE OF MISSOURI:

OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of New Madrid certificate No. 161, together with the papers thereto attached, with the endorsements thereon, as the same appears of — Record Book I of New Madrid certificates and locations now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at the city of Jefferson, this 17th day
30 of February, 1879.

[SEAL.] JAS. E. McHENRY,
Register of Lands.

I next offer what is known as the location by Rufus Easton under this deed made to him by Joseph Vandenbenden and this power of attorney—the location of this certificate which I have just read from Bates.

Easton, as the legal representative of Joseph Hunot, enters 480 acres of land by virtue of certificate 161, dated August 12th, 1816, issued by Frederick Bates, etc. (See page 29 of this transcript.)

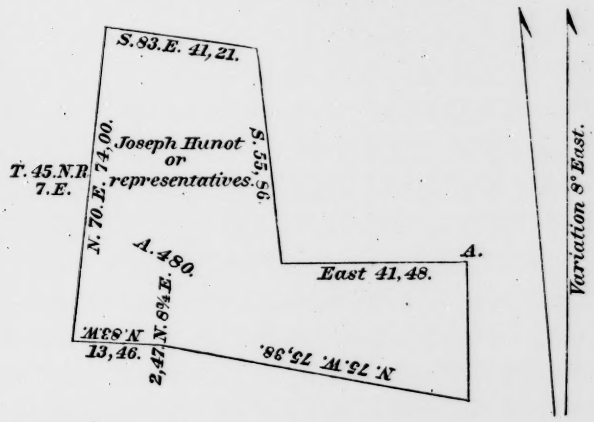
I next offer the certificate which the United States surveyor made in pursuance of this application (page 18 of the record). This is

called survey 2500, certificate 161; surveyed for Joseph Hunot or his legal representatives 480 acres located by virtue of New Madrid certificate, etc.

Survey No. 2500. *Certificate No.* 161.

Survey 2500 under cert. 161.

Certified Copy from Surveyor General's Office.



Surveyed for Joseph Hunot or his legal representatives 480 acres located by virtue of a New Madrid certificate: Beginning at Conway's southeast corner-stone, on the west boundary of 16th section, T. 45, with range 7 east, thence south 36 ch. 14 lks. to E. Yosty's line, N. 75° W. 75 ch. 38 lks. to corner of Gratiott's line; 31 thence N. 8¾ E. with Gratiott's, 2 ch. 47 lks., to the corner-stone of his bigger tract; thence N. 83 W. 13 ch. 46 lks. a stone, the S. E. corner of Herbert's claim; thence N. 7 E. 74 ch. to Delisle's corner-stone; thence S. 83 41 ch. 21 lks. a stone, Generaux corner; thence with his and Conway's line south 55 ch. 86 lks. to Conway's S. W. corner-stone; thence east 41 ch. 46 lks. to the beginning.

June 23d, 1819. JOS. C. BROWN, *D. S.*

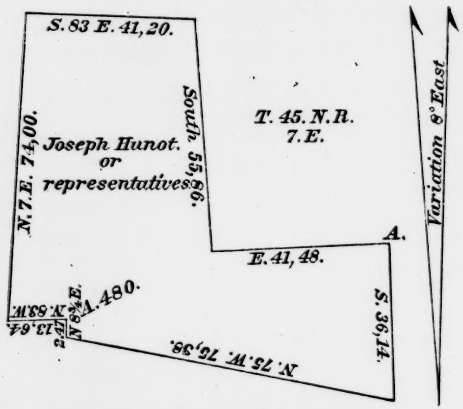
SURVEYOR'S OFFICE, ST. LOUIS, 2*d of July*, 1841.

The above plat and notice of survey No. 2500 are correctly copied from pages 84 and 85 of Record Book A, in this office. The said survey was executed agreeably to the call of a notice of location, dated June 16th, 1818, and signed "Jos. C. Brown, for Rufus Easton," made in virtue of certificate No. 161, of Frederick Bates, recorder of land titles, issued on the 12th of August, 1816, in conformity to the provisions of an act of Congress approved on the 17th of February, 1815, entitled An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes. SILAS REED,

Surveyor of the Pub. Lands in the States of Illinois and Missouri.

That is one that comes from the land office. There is a question as to the return, and I offer another certified copy of the same survey as follows:

Certified Copy of Survey 2500.



32 Survey No. 2500, certificate No. 161. Surveyed for Joseph Hunot or his legal representatives 480 acres located by virtue of a New Madrid certificate: Beginning at Conway's S. E. corner-stone, in the west boundary of the sixteenth section, T. 45 N., R. 7 E., thence south 36 chains 14 links to E. Yosty's line, 7 chains westwardly of his corner on Chouteau; thence with Yosty's line N. 75 W. 75 chs. 38 links to corner of Gratiot's line; thence N. 8¾ with Gratiot's 2 chs. 74 lks., the old corner-stone of his bigger tract; thence N. 83 W. 13 chs. 46 links a stone, the S. E. corner of Hebert's claim; thence N. 7. E. 74 chains to Delisle's corner-stone; thence S. 83 E. 41 chs. 21 lks. a stone, Genereaux' corner; thence with his & Conway's line south 55 chs. 86 lks. to Conway's south-west corner-stone; thence east 41 chs. 48 lks. to the beginning. June 23d, 1819.

JOSEPH C. BROWN, *D. S.*

SURVEYOR'S OFFICE, ST. LOUIS, *8th January*, 1833.

I, Elias T. Langham, surveyor of the public lands in the States of Illinois and Missouri, certify that the above is a true copy of the plat and survey of four hundred and eighty acres of land, surveyed for Joseph Hunot or his legal representatives, in
33 township No. 45 north of the base line, range No. 7 east of the fifth principal meridian, as the- are recorded in my office, in pages 84 & 85 of Record Book A, containing plats and surveys of New Madrid locations.

E. T. LANGHAM.

To F. R. Conway, Esq., recorder of land titles for the State of Missouri.

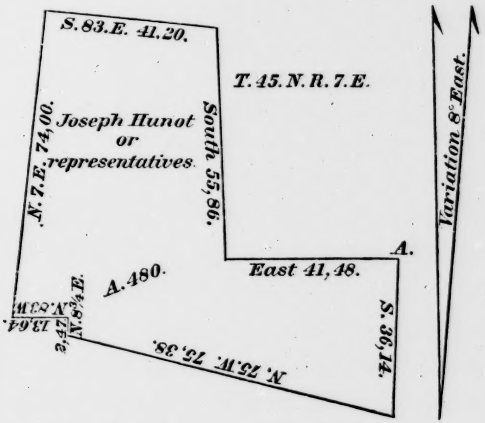
Office of the U. S. recorder of land titles.

ST. LOUIS, *December 24th*, 1873.

This is to certify that the foregoing is a true and correct copy of survey No. 2500 as the same appears of record on page 8 of a book marked "Record Book G," which book is up to this day on file in this office.

STILLMAN O. FISH, *Recorder.*

This came from the office of the United States recorder of land titles, St. Louis, December 24th, 1873. All we claim is this survey was returned to the recorder of land titles on the 8th of January, 1833.



Survey No. 2500, certificate No. 161. Surveyed for Joseph Hunot or his legal representatives 480 acres located by virtue of a New Madrid certificate: Beginning at Conway's S. E. corner-stone, in the west boundary of the sixteenth section, T. 45 N., R. 7 E., 34 thence south 36 chains 14 links to E. Yosty's line 7 chains westwardly of his corner on Chouteau; thence with Yosty's line N. 75 W. 75 chs. 38 links to corner of Gratiot's line; thence N. 8¾ E. with Gratiot's 2 chs. 74 lks., the old corner-stone of his *begun* tract; thence N. 83 W. 13 chs. 46 links a stone, the S. E. corner of Hebert's claim; thence N. 7 E. 74 chains to Delisle's corner-stone; thence S. 83 E. 41 chs. 21 lks. a stone, Genereaux' corner; thence with his & Conway's line south 55 chs. 86 lks. to Conway's southwest corner-stone; thence east 41 chs. 48 lks. to the beginning.

June 23d, 1819.

JOSEPH C. BROWN, *D. S.*

Recorded on 2d Feb'y, 1833.

J. R. CONWAY,
Recorder Land Titles.

SURVEYOR'S OFFICE, ST. LOUIS, *8th January*, 1833.

I, Elias T. Langham, surveyor of the public lands in the States of Illinois and Missouri, certify that the above is a true copy of the plat and survey of four hundred and eighty acres of land, surveyed for Joseph Hunot or his legal representatives, in township No. 45 north of the base line, range No. 7 east of the fifth principal meridian, as the- are recorded in my office in pages 84 & 85 of Record Book A, containing plats and surveys of New Madrid locations.

E. T. LANGHAM.

To F. R. Conway, Esq., recorder of land titles for the State of Missouri.

Office of the U. S. recorder of land titles.

ST. LOUIS, *December 24th*, 1873.

This is to certify that the foregoing is a true and correct copy of survey No. 2500 as the same appears of record on page 8 of a book marked "Record Book G," which book is up to this day on file in this office.

STILLMAN O. FISH, *Recorder*.

35 I next offer the act of June 30th, 1864, U. S. Statutes at Large, vol. 13, page 581, "Be it enacted, etc."

Act of Congress, June 30th, 1864.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the right, title, and interest of the United States in and to all of the lands within the respective boundaries of the following-described locations in township forty-five north of the base line, in range seven east of the fifth principal meridian line, in the State of Missouri, made by virtue of certificates issued under the act of Congress, approved February the seventeenth, eighteen and fifteen, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," shall be, and the same are hereby, granted, relinquished, and conveyed by the United States, in fee simple and in full property, to the following-mentioned persons respectively, or their legal representatives, in whose names said locations were severally made, to wit: Location under certificate number one hundred and sixty-one, being survey number two thousand five hundred, in the name of Joseph Hunot, or his legal representatives; location under certificate number three hundred and forty-eight, being survey number two thousand seven hundred and twelve, in the name of James Conway, or his representatives; location under certificate number one hundred and fifty-nine, being survey number two thousand four hundred and ninety-one, in the name of J. Smith, or his legal representatives; location under certificate number one hundred and forty-five, being survey number two thousand four hundred and ninety-nine, in the name of Mart.n

Coontz, or his legal representatives; location under certificate number thirteen, being survey number two thousand six hundred and ninety-two, in the name of Joseph Genereux, or his representatives; location under certificate number sixteen, being survey number
36 two thousand six hundred and twenty, in the name of Francis Delisle, or his legal representatives; and location under certificate number one hundred and sixty-four, being survey number two thousand five hundred and forty-one, in the name of John Brooks, or his legal representatives: Provided, however, That nothing contained in the foregoing provisions of this act shall, directly or indirectly, comprehend, include, extend to, grant, relinquish, or convey the whole or any part of any lot, tract, piece, or parcel of land in said township which has heretofore been confirmed and surveyed by the United States to any person or persons or to the legal representatives of any person or persons: And provided, further, that nothing in this act shall in any manner abridge, divest, impair, injure, or prejudice, any adverse right, title, or interest of any person or persons in or to any portion or part of the aforesaid lots, tracts, pieces, or parcels of land which are granted, relinquished, or conveyed by this act.

Approved, June 30, 1864.

We put that in to show the fee was taken out of the United States June 30th, 1864.

I next offer a deed of Rufus Easton to William Stokes, dated July 10th, 1819, to define boundaries and to explain, I might say, a mistake which there is in the deed from Easton to Hammond.

"Know all men by these presents."

Deed.

R. Easton
to
Wm. Stokes.

OFFICE OF THE RECORDER OF DEEDS, ST. LOUIS, MO.

Know all men by these presents that we Rufus Easton and Abial Easton wife of said Rufus Easton of the town and county of St. Louis in the Territory of Missouri, for and in consideration of the sum of two thousand three hundred and forty dollars to them paid by William Stokes of the same place at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowl-
37 edged, have granted bargained and sold, and do hereby grant, bargain and sell unto the said William Stokes his heirs and assigns forever a certain tract of land containing two hundred and thirty-four acres situate about three miles west of the town of St. Louis aforesaid in township No 45 north in range No 7 east of the 5th principal meridian and running and bounded as follows to wit: Beginning at a stone at the southeast corner of McGirk's tract thence south 36. 14 links to a stone, thence north 75 west 75 38 links, to a *paste*, thence north 8¾ east 247 links to Gra-

tiot's old corner stone, thence north 83 west 1200 links to a stone, thence north 7 east 1570 links to a stone, at the southwest corner of Col. Samuel Hammond survey thence east 4766 links to the southeast corner of said Hammond survey thence south 383 links to a stone, thence east 4050 links to the place of beginning. It being part of a location of four hundred and eighty acres, made by virtue of a New Madrid certificate issued by the recorder of land titles for the Territory of Missouri in the name of Joseph Hunot or his legal representatives, and which the said Rufus Easton owns by virtue of a deed, Hunot to Joseph Vanden *Vanden* to the said Rufus Easton. To have and to hold the said granted and bargained premises together with all and singular, the rights, privileges and appurtenances thereunto belonging or appertaining unto him the said William Stokes, his heirs and assigns forever. And the said Rufus Easton for himself his heirs executors and administrators covenant, promises and agrees to and with the said William Stokes, his heirs and assigns that the tract of land in lieu of which the aforesaid certificate was obtained, was at the time of obtaining the said certificate free and clear of all or any encumbrances whatsoever, he the said Rufus Easton having particularly examined the records in the county of New Madrid to a-certain the same, and that he obtained from the clerk of New Madrid a certificate of the deed from
38 Hunot to Vandenbenden, and deposited the same in the office of the recorder of land titles at St. Louis. And the said Rufus Easton further covenants as aforesaid to and with the said William Stokes, his heirs and assigns that the aforesaid granted and bargained premises unto him the said William Stokes, his heirs and assigns, he the said Rufus Easton his heirs, executors and administrators will and shall well and truly warrant and forever defend against the claims of all persons or claimants whomsoever.

In testimony whereof the said Rufus Easton and his wife have hereunto set their hands and affixed their seals at St. Louis this tenth day of July in the year of our Lord, one thousand eight hundred and nineteen.

RUFUS EASTON. [SEAL]
ABIAL EASTON. [SEAL]

Signed, sealed and delivered in the presence of
P. QUARLES.
J. A. QUARLES.

TERRITORY OF MISSOURI, }
County of St. Louis. }

Personally appeared before the undersigned, a justice of the peace for the county aforesaid, on the tenth day of July, 1819, the withinnamed Rufus Easton and Abial A. Easton, his wife, and acknowledged that they sealed, delivered, and executed the within deed of conveyance as their voluntary act and deed to William Stokes, therein named, and having examined the wife of the said Rufus Easton separate and apart from her husband and made known the

full contents of the said conveyance to her, upon that examination she declared that she did voluntarily and of her own free will and accord seal and as her act and deed deliver the said conveyance without any coercian or compulsion of her said husband.

Given under my hand and seal, date as above.

JOSEPH CHARLESS, *J. P.* [SEAL.]

Recorded July 31st, 1819.

ARCH'D GAMBLE, *Clerk.*

39 STATE OF MISSOURI, } ss:
City of St. Louis, }

OFFICE OF RECORDER OF DEEDS.

I, the undersigned, recorder of deeds, certify that the foregoing is a true copy of an instrument in writing executed by Rufus Easton & wife to William Stokes, together with the acknowledgement and date of filing and recording thereof, as fully as the same remains of record in my office, in Book H, page 416.

Witness my hand and official seal this 30th day of March, 1880.

[SEAL.] C. W. IRWIN, *Recorder.*

I next offer a copy of a deed of Rufus Easton to Samuel Hammond, dated the 29th day of September, 1823:

Deed.

R. Easton
to
S. Hammond.

OFFICE OF THE RECORDER OF DEEDS, ST. LOUIS, MO.

This deed made this twenty-ninth day of September in the year of our Lord one thousand eight hundred and twenty-three between Rufus Easton of the town of St. Charles in the State of Missouri and Abial his wife, of the first part and Samuel Hammond of the county of Jefferson in the said State of the second part, witnesseth; That the said Rufus Easton and wife for and in consideration of the sum of fifteen hundred and eighty-three dollars to him in hand paid by the said Samuel Hammond, and pursuant to the conditions of a certain bond executed by the said Rufus Easton to the said Samuel Hammond and James I. Wilkinson, dated 3d September 1818, they the said Rufus Easton & wife have granted bargained and sold and by these presents do grant bargain & sell convey and confirm unto the said Samuel Hammond and to his heirs and assigns forever two hundred and forty acres of land, and the whole of the following tract, except two hundred and thirty-four acres of land of the said tract conveyed to Willian H. Ashley as will appear by deed
40 of 1819 recorded in the recorder's office of St. Louis county to wit; four hundred and eighty acres of land described in the following entry; Rufus Easton as the legal representative of Joseph Hunot enters four hundred and eighty acres of land by virtue of a certificate No 161, issued by Frederick Bates Esquire, re-

corder of land titles to wit: that part of fractional section seventeen in township forty-five north, and range seventeen west (the township in which St. Louis is situated) lying north of the Cul-de-Sac fields fractional section eighteen in the same township and so much off on the east side of the unappropriated part of fractional section eight of the same township as will make the quantity, which entry is dated St. Louis June 16th, 1818, and signed Joseph C. Brown for Rufus Easton. To have and to hold the above described and granted premises being two hundred and forty acres of land hereby conveyed together with the appurtenances unto him the said Samuel Hammond and to his heirs and assigns forever, and for the consideration above mentioned, the said Rufus Easton doth covenant and agree with the said Samuel Hammond his heirs and assigns the title to the above-granted two hundred & forty acres of land he will forever warrant and defend unto the said Samuel Hammond his heirs and assigns against the claims and demands of all persons whomsoever.

In witness whereof the said Rufus Easton and wife do hereunto set their hands and seals the day and year first above written.

RUFUS EASTON. [SEAL]
ABIAL EASTON. [SEAL]

Signed sealed & delivered in presence of
ROBERT SIMPSON.
GUSTAVUS A. HAMLIN.

STATE OF MISSOURI, } ss:
County of St. Louis, }

This day personally appeared before me, the clerk of the
41 circuit court for the county of St. Louis, the within-named Rufus Easton and Abial, his wife, who are personally known to me as the grantors in the within deed, and acknowledged the same to be their acts and deeds, hands and seals, for the purposes therein mentioned; and the said Abial Easton, being by me examined separately and apart from her said husband, acknowledged that she executed the same freely and voluntarily and without the compulsion or undue influence of her said husband.

[SEAL.] Given under my hand and seal of office, at St. Louis, this ninth day of October, eighteen hundred and twenty-three.

ARCHIBALD GAMBLE, *Clerk.*

Recorded Feb. 9th, 1824.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

OFFICE OF RECORDER OF DEEDS.

I, the undersigned, recorder of deeds, certify that the foregoing is a true copy of an instrument in writing executed by Rufus Easton & wife to Samuel Hammond, together with the acknowledgement

and date of filing and recording thereof, as fully as the same remains of record in my office, in Book "L," page 489.

Witness my hand and official seal this 30th day of March, 1880.

[SEAL.] C. W. IRWIN, *Recorder.*

We say that "Ashley in that deed means Stokes." We will put in evidence the records to show there never was a deed made by Easton to Ashley, and we say it is a mistake—that Ashley was Stokes. It does appear that Ashley at that time was acting as the agent for Stokes. The exact amount he names here as conveyed to Ashley is exactly the amount he put in his deed to Stokes.

I next offer certain depositions. I do not suppose the gen-
42 tlemen care to have me read them to prove that these plaintiffs are the legal representatives and heirs of Hammond; that Mrs. Washington was the daughter and owned one-fifth of her father's title, and that the other heirs named in the petition claim all the rest. I wish it to appear that Laura Briquett's husband is properly a party to the suit, because since the suit commenced she married Alexander Webb. I ask to add Alexander Webb, as the husband of Laura Briquetts.

Deposition of ANDREW J. HAMMOND, of lawful age, being produced, sworn, and examined on the part of the plaintiff-, deposeth and saith:

Question. What is your name & age?

Answer. Andrew J. Hammond; age, sixty years.

Q. Where do you reside, how far is it from this place, and how long have you resided there?

A. I reside in Aiken county, South Carolina, formerly Edgefield county, five miles from this place; have resided there or its vicinity all my life.

Q. Do you own any land; &, if so, how much?

A. I own fifteen hundred or more acres of land.

Q. Did you hold any public office before the last war; and, if so, what?

A. I was a member of the Legislature of South Carolina & a captain in the militia of that State.

Q. Did you ever know a man named Samuel Hammond?

A. I did.

Q. When did he die, & where?

A. Don't recollect exactly; about twenty-five years ago. He died on his place called Varillio, near Augusta, Ga.—in South Carolina.

Q. Was he any relation of yours?

A. Yes; he was second cousin.

Q. Tell whatever you know of the man, both by family report & of your own knowledge.

A. Samuel Hammond, the man of whom I am speaking, was born in Virginia. He was a soldier in the Revolutionary war, where he greatly distinguished himself in many battles, first as captain &

afterwards as colonel. He was once a member of Congress
43 from Georgia & afterwards appointed to some public office in what is now the State of Missouri—I believe territorial Governor. He resided some years in Missouri, & on his return to South Carolina I was a boy of about ten years of age, &, living near him, was intimate with him & family until his death. He was secretary of state of South Carolina for some years after his return from Missouri.

Q. Who did his family consist of?

A. His wife, who died before him, & children, namely: Charles was eldest; Samuel, I believe, was second; Ellen, the wife of Samuel Kingman, was, I believe, the third, & Abner L. was, I think, the fourth; Mary Ann Washington, wife of James H. Washington & John was the youngest.

Q. Did Charles marry; and, if so, who?

A. He married Miss Reynolds.

Q. Is he living?

A. He is not.

Q. Did he leave any family?

A. He left a wife, but I think no children.

Q. Did Samuel Hammond, the son of the said Samuel Hammond, marry?

A. He married Miss Lark.

Q. What became of Samuel Hammond, Jr.?

A. He removed some years ago to Alabama, near Talladega, I think.

Q. Is Ellen Kingman, wife of Samuel Kingman, living?

A. No, sir.

Q. About what year did she die, & *when?*

A. I think she died before the war, but do not know where.

Q. Did she leave any children?

A. Yes, sir.

Q. Please name them.

A. Mary, Anna, Emma, & Julia. There was a son, whose name I do not recollect, & who has died since the war.

Q. Was this son married?

A. No, sir.

Q. Are any of these young ladies married; &, if so, to whom?

A. Anna married Joseph S. McKie, my son-in-law.

Q. From family report, or from your own knowledge, do you know or believe that all of these children of Ellen Kingman were in the so-called Confederate States during the whole period of the last war?

44 A. I think so, beyond a doubt.

Q. Is Samuel Kingman, husband of the said Ellen Kingman, living?

A. No, sir.

Q. About what year did she die?

A. He died about two years ago.

Q. Did he marry again after the death of his wife Ellen?

A. Yes, sir.

Q. Did he have any children by his second wife?

A. He did.

Q. Do you know if any of these children were born before the death of the son of Samuel Kingman, of which you have spoken?

A. Yes, sir; I believe they all were.

Q. Where are the children of Samuel & Ellen Kingman living?

A. Three of them are living in Edgefield county, & one in Aiken county, South Carolina, near this place.

Q. Did Abner L. Hammond, son of Samuel Hammond, marry?

A. Yes, sir.

Q. Is he living?

A. No, sir.

Q. Can you recollect about when he died?

A. He died within a year or two.

Q. Do you know where he lived before he died?

A. He lived in Charleston, South Carolina, many years; I think he died in Macon, Ga., at his sister's house.

Q. From family report, or from your own knowledge, do you know or believe that the said Abner L. Hammond was in the so-called Confederate States during the whole period of the last war?

A. I think so; have no doubt of it.

Q. Did said Abner L. Hammond leave any family?

A. Yes, sir; he left several children.

Q. Is James H. Washington, husband of Mary Ann Washington, who was daughter of Samuel Hammond, living?

A. No, sir; he died after the war.

Q. Where is his widow living?

A. At Macon, Georgia.

Q. From family report, — of your own knowledge, do you know or believe if the said James H. Washington and Mary Ann, his wife, were in the so-called Confederate States during the whole
45 period of the last war?

A. I believe they were. I don't think they ever left the Confederate States.

Q. Did John Hammond, the son of the said Samuel Hammond, marry?

Q. Yes, sir; he married Miss Susan Richardson.

Q. Is he living?

A. He is not living.

Q. Do you know if he left any children?

A. Yes; but I don't know how many, or whether they are living or not.

Q. Do you know if his widow married again?

A. I think she did, but cannot say.

Q. Have you any interest in this suit?

A. None whatever.

ANDREW J. HAMMOND.

Subscribed and sworn to before me on the day, at the place, and within the hours first aforesaid.

[SEAL.] JAMES C. C. BLACK,
Notary Public, Richmond Co., Georgia.

Not being able to complete the taking of said depositions by reason of the non-attendance of witnesses, I adjourn the further taking of the same until Monday next, then to be continued at the same place & between the same hours mentioned in annexed notice.

JAMES C. C. BLACK,
[SEAL.] *Notary Public, Richmond Co., Ga.*

Pursuant to adjournment as above stated, on the 28th day of December, 1874, between the hours of eight in the forenoon & six in the afternoon, at the place last aforesaid, I continued the taking of said depositions as follows:

Deposition of JOSEPH S. MCKIE, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

46 Q. What is your name and age, and where do you reside?

A. My name is Joseph S. McKie, age thirty-two years, & reside in Edgefield county, South Carolina, nineteen miles from this place.

Q. How long have you resided at your present place or its vicinity?

A. All my life, within a mile of where I now live.

Q. Do you own any land; &, if so, how much?

A. I do, about a thousand acres.

Q. Are you married? &, if more than once, state the name of each wife and her family.

A. My first wife was Lucy S. Hammond, daughter of Andrew J. Hammond. My second wife was Anna W. Kingman, daughter of Samuel & Ellen Kingman, of Charleston, South Carolina.

Q. When & where did you marry Miss Kingman, & by whom were you married?

A. We were married 18th of December, 1873, at Hardy's Baptist church, in Edgefield county, South Carolina, by Rev. John P. Mealing.

Q. Do you know if Mr. Samuel Kingman is living?

A. He is dead, & died about two years ago.

Q. Where did Mr. Samuel Kingman die?

A. He died in Charleston, South Carolina.

J. S. McKIE.

Subscribed and sworn to before me on this day, at the place & within the hours first aforesaid, this 28th day of December, 1874.

JAMES C. C. BLACK,
[SEAL.] *Notary Public, Richmond County, Georgia.*

Not being able to complete the taking of said depositions on account of the non-attendance of witnesses, I adjourn the further taking of the same until to-morrow, then to be continued at the same place and between the same hours mentioned in the annexed notice.

47 JAMES C. C. BLACK;
[SEAL.] *Notary Public, Richmond County, Georgia.*

Pursuant to adjournment, as above stated, on the 29th day of December, 1874, between the hours of eight in the forenoon and six in the afternoon, at the place last aforesaid, I continued the taking of said depositions as follows:

Deposition of JAMES H. WASHINGTON, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

Q. What is your name & age?

A. James H. Washington; age, thirty-four years.

Q. What is the name of your father & mother?

A. My father's name was James H. R. Washington; my mother's name is Mary Ann Washington.

Q. Is your father living?

A. He is not.

Q. When & where did he die?

A. He died in Macon, Georgia, in 1867.

Q. Where is your mother now living?

A. In Macon, Georgia.

Q. What was the name of the father & mother of your mother?

A. Samuel Hammond & Eliza Amelia Hammond.

Q. Where were they married?

A. They were married at the residence of Col. Goodwin, called Mattock, in South Carolina, in 1802.

Q. When was your mother born?

A. She was born at Bellevale, the name of my grandfather's country-seat, some miles from Herculaneum, in the State of Missouri, as it is now.

Q. Did your grandfather & family live in any other part of what is now Missouri?

A. They lived in St. Louis & some other places.

Q. Did your grandfather die in Missouri?

A. No, sir; he died in South Carolina, in Edgefield district, not far from Augusta, from which place he was buried with military honors as a Revolutionary officer.

Q. Where were you & your mother during the whole of the late war?

A. We were in Macon, Georgia, during the whole of the war.

48 Q. In what year did your grandfather & family return from Missouri to South Carolina?

A. In 1824.

J. H. WASHINGTON.

Subscribed and sworn to before me on this day, at the place and within the hours first aforesaid, this 29th day of December, 1874.

JAMES C. C. BLACK,

[SEAL.] *Notary Public, Richmond County, Georgia.*

Deposition of SUSAN BRIQUET, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

Q. What is your name & age & where do you live?

A. My name is Susan Briquet; age, fifty-five years; & live at Langley, Aiken county, South Carolina, eight miles from this place.

Q. If married, state the name of your husband.

A. Claudius Briquet.

Q. Have you any children by him? If so, state their names.

A. One child only—Laura Virginia Briquet.

Q. Is your daughter of age?

A. No; she is a minor.

Q. Have you ever been married before? &, if so, state the name of your first husband & your own name before marriage.

A. The name of my first husband was John O'Keef Hammond, & my name before marriage was Susan Richardson.

Q. Did you have any children by your first husband?

A. Yes, sir.

Q. Where any of these children living when you married your second husband? If, so, give their names.

A. Two only were living—Charles L. Hammond & Frances A. Hammond.

Q. Are those children now living?

A. No, sir; they are dead.

Q. What years did they die?

A. Charles L. Hammond, my son, died 30th of June, 1862, unmarried, & my daughter Frances died September 16th, 1867.

Q. Did both of these children die before or after the birth
49 of your child by your second husband?

A. They both died after.

Q. After the commencement of the last war was your son in the so-called Confederate States until his death?

A. He was.

Q. Was your daughter Frances A. Hammond, your daughter Laura Virginia Briquet, & yourself living together during the last war?

A. Yes, sir; we were.

Q. Where were you living?

A. In Augusta, Georgia, all the time.

Q. Where was your son at the commencement of the last war?

A. In Charleston, South Carolina.

Q. Did he remain there until his death?

A. No; he went to Richmond & died there.

Q. Where was your first husband born?

A. In Herculaneum, Missouri.

Q. When did he die?

A. He died January 1st, 1855.

Q. What was the name of his father and mother?

A. His father was named Samuel Hammond, and his mother Eliza Amelia.

Q. Did they live in any other part of Missouri?

A. They lived in St. Louis.

Q. Did his father, Samuel Hammond, die in Missouri?

A. No; he died about seven miles from this place, in South Carolina.

Q. Did your first husband, John O'Keefe Hammond, have any brothers and sisters? If so, state their names, and, if married, state whom they married.

A. Charles Hammond, the oldest, married Sarah Ann Reynolds; Ellen Hammond married Samuel Kingman; Samuel Hammond married Ellen Lark; Abner L. Hammond married Catherine Barsh; Mary Ann Hammond married James Washington.

Q. Is Charles Hammond living?

A. No, sir.

Q. Did he die before or after his father?

A. He died before his father.

Q. Did he leave any children?

A. He did not have any.

Q. Is Abner L. Hammond living?

A. No, sir.

Q. Did he leave any children? If so, name them.

50 A. He left three when he died—Mrs. Augusta G. Barsh, who is here present; Mrs. Catherine V. Price, & David L. Hammond.

Q. Do you know whether Mr. Samuel Kingman, the brother-in-law of your first husband, is living?

A. No, sir; he is not.

Q. Were any of the children by your first husband married?

A. No, sir; none of them.

Q. In what year were you married to your first husband?

A. August 7th, 1840.

SUSAN BRIQUET.

Subscribed & sworn to before me on this day, at the place and within the hours first aforesaid, this 29th day of December, 1874.

JAMES C. C. BLACK,

[SEAL.] *Notary Public, Richmond County, Georgia.*

Deposition of CLAUDIUS BRIQUET, of lawful age, being produced, sworn, and examined on the part of the plaintiff, deposeth and saith:

Q. What is your name and age?

A. Claudius Briquet; sixty years of age.

Q. Where do you live?

A. At Langley, Aiken Co., South Carolina.

Q. Are you married?

A. I am. The lady present is my wife. Her name is Susan Briquet.

Q. When were you married?

A. March 30th, 1858.

Q. When you married her was she a single woman or widow?

A. She was the widow of John O'Keefe Hammond.

Q. Did she have any children by her first husband when you married her?

A. She had two—Frances & Charles.

Q. Has she any children by yourself?

A. One—Laura Virginia Briquet.
Q. Are the children by her first husband living?
A. No, sir; they are both dead.
Q. Did they die before or after the birth of your daughter, Laura Virginia?
A. After her birth.
Q. Were either of them married?
A. No, sir.

51 CLAUDIUS BRIQUET.

Subscribed & sworn to before me on this day, at the place & within the hours first aforesaid, this 29th day of December, 1874.

JAMES C. C. BLACK,
[SEAL.] *Notary Public, Richmond County, Georgia.*

Deposition of AUGUSTA C. BARSH, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth & saith:

Q. What is your name, &, if married, the name of your husband, & your age?
A. My name is Augusta G. Barsh; my husband's name, William F. Barsh, & my age *if* thirty-three years.
Q. When were you married?
A. In Charleston, South Carolina, where I lived.
Q. Where do you now reside?
A. At Langley, Aiken county, South Carolina.
Q. When did you move from Charleston?
A. In August, 1874.
Q. Have you any brothers & sisters? If so, please state their names.
A. Mrs. Catherine V. Price, wife of Thomas M. Price, & David L. Hammond.
Q. Where do they live?
A. In Charleston, South Carolina.
Q. What was the name of your father & mother?
A. Abner L. Hammond & Catherine.
Q. Where was your father born?
A. In Missouri—St. Louis, I think.
Q. What was the name of his father & mother?
A. Samuel Hammond & Eliza Amelia.
Q. Is your grandfather, Samuel Hammond, living?
A. No, sir.
Q. When did he die?
A. At Varillo, near Augusta, Georgia.
Q. What kind of a place was Varillo?
A. The name given to his farm, a few miles from Augusta, in South Carolina.
Q. Are your mother & father living?
A. They are both dead.
Q. About what year did your mother die, and where?

A. At Charleston, South Carolina, near 1870.

52 Q. What year did your father die, and where?

A. In July, 1872, at Macon, Georgia, at the house of his sister, Mrs. Mary Ann Washington.

Q. Where were you living during the last war?

A. In Charleston, South Carolina.

Q. Where was your father during the late war?

A. Either in South Carolina or Virginia during the whole of the war, & perhaps a little while in Macon, Georgia.

Q. In what part of Virginia?

A. In Richmond & Petersburg.

Q. Did your father have any brothers and sisters? And, if so, name them.

A. Yes; Charles, Ellen, Samuel, Mary Ann, & John O'Keefe Hammond.

Q. From family report can you teil when & where your parents were married?

A. They were married in Columbia, South Carolina, by Rev. Peter Shaw; I believe in the year 1832.

AUGUSTA G. BARSH.

Subscribed & sworn to before me on this day, at the place and within the hours first aforesaid, this 29th day of December, 1874.

JAMES C. C. BLACK,

[SEAL.] *Notary Public, Richmond County, Georgia.*

Deposition of WILLIAM F. BARSH, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth and saith:

Q. What is your name & age & where do you reside?

A. My name is William F. Barsh; age, thirty-five years, & reside at Langley, Aiken Co., South Carolina.

Q. If you are married state the name of your wife & when & where you were married.

A. My wife's name was Augusta G. Hammond. We were married 21st of January, 1873, at Charleston, South Carolina, where she resided.

Q. What was your wife's father's name?

A. His name was Abner L. Hammond.

Q. After your marriage where did you reside?

53 A. At Ridgeville, South Carolina, for three or four months, & then in Charleston, South Carolina, until August of this year.

WM. F. BARSH.

Subscribed and sworn to before me on this day, at the place and within the hours first aforesaid, this 29th day of December, 1874.

JAMES C. C. BLACK,

[SEAL.] *Notary Public, Richmond County, Georgia.*

Not being able to complete the taking of said depositions by reason of the non-attendance of witnesses, I adjourn the further taking of the same until to-morrow, then to be continued at the same place and between the same hours mentioned in the annexed notice.

JAMES C. C. BLACK,

[SEAL.] *Notary Public, Richmond County, Georgia.*

Pursuant to adjournment, as above stated, on the 30th day of December, 1874, between the hours of eight in the forenoon and six in the afternoon, at the place last aforesaid, I continued the taking of said depositions as follows:

Deposition of MARY A. KINGMAN, of lawful age, being produced, sworn, and examined on the part of the plaintiffs, deposeth & saith:

Q. What is your name, & where do you reside?

A. My name is Mary A. Kingman, & I reside in Aiken county, South Carolina.

Q. Are you over twenty-one years of age?

A. I am.

Q. What is the name of your father & mother, & when & where were they married?

A. My father's name was Samuel Kingman; my mother's name was Margaret Ellen, but she was almost always called Ellen. I believe they were married in 1836; they were married at the residence of my grandfather, Samuel Hammond, at Varillo, South Carolina, a few miles from this place.

Q. Are your parents living?

A. They are both dead.

54 Q. When did your mother die, & where?

A. In Charleston, South Carolina, in 1853.

Q. Did she leave any children besides yourself? If so, state their names.

A. She left Samuel Hammond Kingman, Margaret Ellen Kingman, Anna W. Kingman, Emma W. Kingman, Julia S. Kingman, & James McC. Kingman.

Q. Is James McC. Kingman living?

A. No.

Q. When did he die?

A. In 1853, same year my mother died.

Q. Is your father living?

A. He is not.

Q. When & where did he die?

A. In Charleston, South Carolina, in 1871.

Q. Did he marry again after the death of your mother?

A. He did.

Q. Did he have any children by his second marriage? If so, name them.

A. He had several—Susan B. Kingman, Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman.

Q. Is Margaret Ellen Kingman, your sister, living?

A. She is not.

Q. When did she die?

A. I do not remember the exact date, but it was after the birth of the first child & before the birth of the second child of my father by his second marriage.

Q. Is Susan B. Kingman, the eldest child of your father by his second marriage, living?

A. No, sir; she died at the age of a few months, just before the death of my sister, Margaret Ellen Kingman.

Q. Is your brother, Samuel Hammond Kingman, living?

A. He is not.

Q. When did he die, & was he married?

A. He died in 1871, unmarried.

Q. Were all the children of your father by his second marriage born before the death of your brother, Samuel Hammond Kingman?

A. They were.

Q. Are any of these children of age?

A. No, sir; they are all minors.

Q. When did your father marry a second wife?

A. In September, 1854.

55 Q. Where did your father die, & when?

A. In September, 1871, in Charleston, South Carolina.

Q. Where did you, your brothers & sisters, & half brothers & sisters reside during the war?

A. We all resided either in Charleston or Columbia, South Carolina, during the whole of the war.

Q. Where did your father reside during the war?

A. With his children all the time, either in Charleston of Columbia.

Q. What was the name of the father & mother of your mother?

A. Samuel Hammond & Eliza Amelia Hammond.

Q. Where was your mother born?

A. In St. Louis, Mo.

Q. Were her parents living at St. Louis, Missouri, at the time?

A. They were.

Q. Did your grandfather die in Missouri?

A. He did not. He died at Varillo, South Carolina, a few miles from here.

Q. Did your mother have any brothers & sisters? If so, name them.

A. Yes; Charles, Samuel, Abner L., Mary Ann, the wife of James H. Washington, & John O'Keefe Hammond.

Q. Are any of your sisters married; and, if so, who?

A. One of them—Annie W. Kingman, who married Joseph S. McKie.

MARY A. KINGMAN.

Subscribed & sworn to before me on this day, at the place and within the hours first aforesaid, this 30th day of December, 1874.

JAMES C. C. BLACK,

[SEAL.] *Notary Public, Richmond County, Georgia.*

Deposition of SAMUEL E. HAMMOND, sworn and examined on the part of the *part of the* plaintiff-, testified as follows:

Direct examination:

By Mr. JEWETT: What is your name?
A. My name is Samuel E. Hammond.
Q. Your age?
A. Thirty-nine the 19th of next May.
Q. Where were you born?
A. Edgefield, South Carolina, three miles from Hamburg.
56 Q. What is the name of your father?
A. Samuel Elbert Hammond.
Q. What was the name of his father?
A. Samuel Hammond.
Q. When was your father born?
A. My father was born in just—I don't know what place. I think somewhere within about twelve miles of Cape Girardeau. I am not certain about that, though.
Q. In the southern part of the State?
A. Yes, sir.
Q. Whose grandson did you say you are?
A. Samuel Hammond's, known as Col. Samuel Hammond.
Q. Did he ever live in the State of Missouri?
A. Yes, sir.
By Mr. HILL: Of your own knowledge do you know anything of this?
A. I don't know only from the facts what I have heard.
Q. According to the accounts from your family?
Mr. HILL: That won't do.
Q. Where did your grandfather die?
A. He died, I think, within three miles of Hamburg, Edgefield, South Carolina.
Q. Do you know the name of his country seat from your family history?
A. I do not, only on —— island, three miles below Hamburg, on the river.
Q. Three miles from Augusta?
A. Yes; on the South Carolina side.
Q. How many children did your father leave at his death?
A. He left at his death nine.
Q. How many of them are alive now?
A. Three.
Q. What are their names?
A. My brother Charles L., and sister Sarah G., and myself.
Q. The other six are dead?
A. Yes, sir.

Q. Were they married or unmarried?
A. All unmarried.
Q. Leaving no issue, either of them?
A. No, sir.
The COURT: When did your father die?
A. My father died in 1849; I think the 20th of May, if I mistake not.
Q. The children died since your father?
A. All died the next year or within a year or two. Four
57 of them died. There was five of them died, I believe, the next year, all within three weeks of one another. I had a brother died. The oldest died in Arkansas in 1857; another brother killed in the army in Virginia.
Q. There are but three of you left of that branch of the Hammond family?
A. That is all.
Q. Sarah G. Hammond?
A. Yes.
Q. Charles L. Hammond?
A. Yes.
Q. And Samuel E. Hammond?
A. Yes.
Q. They are the only surviving children of Samuel E. Hammond, your father?
A. Yes.
Mr. HILL: Samuel L. Hammond, your father?
A. No; Samuel E.

Mr. MORRISON: I would suggest to the counsel on the other side that this witness is here from Arkansas and he may want to return home again, and that we be permitted to ask, with the consent of counsel, where he and his brother resided during the late civil war, and that the witness may go home if he chooses.
Mr. HILL: Subject to our objection.
The COURT: That testimony can be taken in a certain sense provisionally.

Q. State, if you know, where your sister and your brother, Charles L. Hammond, resided, and state where you resided, during the late civil war in the United States.

The COURT: It is understood that you object to the relevancy of this testimony.
Mr. HILL: Its competency and relevancy, both.
The COURT: I will take it subject to both.
Mr. MORRISON: Its competency depends on the future.
The COURT: Yes; it is provisional.

A. My sister resided at Taledego, Alabama, on the old homestead, during the war. My brother went from there in the army.
Q. What army?

A. The Confederate army—the Virginia army. I went
58 from Memphis in the war and was in it for a year; came back and was in the neighborhood of Memphis the balance of the time and in North Mississippi, Marshall county.

Q. Were you in the Confederate army?

A. Yes, sir.

Q. What time during the war?

A. Three years—the first three years; got discharged; got back home in the neighborhood of Memphis; part of the time in Marshall county.

Q. Were you in the United States, as distinguished from the Confederate States, any time after the commencement — civil war till after its termination?

A. I was in no other State except Tennessee and Mississippi. When I came back of course Tennessee was considered on- of the Confederate States.

The COURT: He can state the years he was in Tennessee and that it was occupied by the United States Government forces.

A. They were in Memphis.

Q. Were you in the lines?

A. No, sir; I was not; only they carried me in the lines.

Q. I mean living—residing.

A. No, sir.

Mr. MORRISON: Carried you in the lines as prisoner, did they?

A. Yes—that is, in 1864, on the fall of Richmond.

Mr. JEWETT: Then what time he was in Memphis he was in the Confederate service?

WITNESS: I was not in Memphis at all.

Q. Near Memphis?

A. No, sir; after I came back from Alabama I was near Memphis.

Q. After you left the army?

A. Yes; within six miles of Memphis and outside of the lines.

Q. Outside of the United States lines?

A. Yes, sir.

Q. Within the Confederate lines, as they claim?

A. I was outside of the United States lines.

The COURT: What time did you say you returned to the
59 vicinity of Memphis?

A. It was in the summer, I think, July or August, 1864.

Q. Previous to that time, from 1861, were you in the army?

A. I was in the western army division, Tennessee regiment.

Q. From that time to 1864?

A. From the time I left the army, you mean?

COUNSEL: Yes, sir.

A. I first went back to Marshall county, Mississippi, which is the northern line, just 32 miles from Memphis; I had a little farm there, and staid six or nine months, and then went back of Memphis and remained there till the surrender.

Q. In saying you were outside of the line of the United States Army do you mean you were in the Confederate lines?

A. Well, I don't know, sir; sort of between the two pickets; both went backward and forward.
Q. Through that same region?
A. Yes, sir.
Q. During that period?
A. Yes; I was six miles outside of the picket line of Memphis.
Q. Memphis was the picket line?
A. Yes; the Federal line.
Q. Connected with that post?
A. Yes, sir.
Mr. MORRISON: You were six miles south of the Federal picket line?
Mr. HILL: Outside?
Q. I mean north or south side.
WITNESS: I was southeast of Memphis.
Q. You were the south side of the picket line?
A. Yes, sir; south side.

Cross-examination:

By Mr. HILL: We will ask him what years he was in the Confederate army.
A. In 1861–'2–'3, sir.
Q. Of your own personal knowledge do you know where your sister was at that time?
A. Yes; only from letters I received from her; she was living with my mother, living on the homestead.
60 Q. You never saw her during those years in South Carolina?
A. No, sir; I did not.
Q. How long before that had you seen her?
A. I was at home in 1857; in December I left home the last time, I think, about the 15th of December.
Q. Do you know of your own knowledge where your brother Charles was during the war?
A. Just only—I received letters from him when he was in the army.
Q. Did you see him?
A. No, sir; I did not, because he was in the Virginia army and I in the western army.
Q. So you have no personal knowledge—you never saw him in the Virginia army?
A. No, sir; I didn't see him, but received letters from him during the time.

Redirect examination:

By Mr. ——: Where does your sister live now?
A. She lives with me and has ever since.
Q. How long?
A. Ever since 1865, with the exception of one year; she came to me shortly after the surrender.

Q. What time in 1865?
A. I think in September or October; I am not positive which.

I certify that the foregoing is a true and faithful transcript of my shorthand notes of the testimony of Samuel Hammond, taken by me in the trial of the cause of Hammond *vs.* Coleman, January 12th, 1875.

L. L. WALBRIDGE,
Stenographer.

Pl'ffs offer them to prove heirship and afterwards in rebuttal offer these depositions to prove residence in insurrectionary States. See this record page.

61 I next offer a deed of Claudius Briquett and wife to Edward C. Smith, dated the 7th of March, 1874, acknowledged the same day, and recorded on the third of June, 1874:

Deed.

C. Briquet & Wife
to
E. C. Smith.

This indenture made this seventh day of March A. D. one thousand eight hundred and seventy-four, by and between Claudius Briquet and Susan Briquet his wife of the county of Aiken and State of South Carolina parties of the first part, (the said Susan Briquet was formerly Susan Hammond the widow of John O'K. Hammond) and Edward C. Smith of the county of St. Louis and State of Missouri party of the second part, witnesseth, that the said parties of the first part for and in consideration of the sum of seven thousand and fifty dollars ($7050.) have granted bargained and sold and do by these presents grant, bargain and sell to the said party of the second part his heirs and assigns forever, all of their and each of their right title and interest claim and demand both of fee and of dower, in and to the land and real estate known as United States survey number two thousand five hundred (2500) situate and lying in the county of St. Louis and State of Missouri—part of this purchase money, viz, fifty dollars has been paid to the said parties of the first part by the said party of the second part and the receipt whereof is hereby acknowledged, the remainder viz, seven thousand dollars is to be paid to the said Susan Briquett or her legal representatives as soon as the said party of the second part or his assigns obtain possession of any part of the before described land by virtue of this deed, it now being in possession or occupation of unknown parties holding adversely to her. To have and to hold to the said party of the second part his heirs and assigns forever, together with all hereditaments and appurtenances thereunto belonging. In witness whereof the said parties of the first part have hereunto set their

hands and seals at the city of Augusta and State of Georgia the day and year first above written.

62 C. BRIQUET. [SEAL.]
SUSAN BRIQUET. [SEAL.]
EDWD. C. SMITH. [SEAL.]

STATE OF GEORGIA, *County of Richmond,* } ss:

Be it remembered that on this seventh day of March, A. D. 1874, before me, David D. Macmurphy, clerk of the superior court of said county, the same being a court of record, personally came Claudius Briquet and Susan Briquet, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Susan Briquet, being by me first made acquainted with the contents of said instrument upon an examination separate and apart from her husband, acknowledged that she executed the same and relinquished her fee and also her dower in the real estate therein mentioned freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed the official seal of said court, at Augusta, in said county and State, the day and year first above written.

The words "before me" interlined before signing.

D. D. MACMURPHY,
[SEAL.] *Clerk of Superior Court, R. C., Ga.*

STATE OF MISSOURI, *County of St. Louis,* } ss:

I, the undersigned, recorder of said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd at 10.40 o'clock a. m., 1874, and is truly recorded in Book 496, page 449.

63 Witness my hand and official seal the date last aforesaid.
[SEAL.] W. C. KENNETT, *Recorder.*

I next offer a deed of Edward C. Smith to James L. D. Morrison of all the interest acquired from Mrs. Briquett, dated May 20th, 1874, and acknowledged the 21st of May, 1874, and recorded June 3rd, 1874:

Deed.

E. C. Smith
to
J. L. D. Morrison.

This indenture made this twentieth day of May A. D. one thousand eight hundred and seventy-four by and between Edward C. Smith of the city of St. Louis & State of Missouri, party of the first part and James L. D. Morrison of the same place party of the second

part, witnesseth, that the said party of the first part for and in consideration of the sum of five hundred and sixty dollars ($560.) to him in hand paid and the receipt of which is hereby acknowledged, and also for other considerations, hath bargained sold conveyed and quitclaimed and doth by these presents, bargain sell convey and quitclaim to the said party of the second part all of his right title and interest in United States survey number two thousand five hundred (2500) which was acquired by him by deed of Claudius Briquet and Susan Briquet his wife of Aiken county and State of South Carolina. Said deed was dated March 7th A. D. 1874 and acknowledged the same day before the clerk of the superior court of Richmond county at the city of Augusta in the State of Georgia. It is the intent and meaning of this deed to convey to the said James L. D. Morrison all the rights acquired by the said deed of Claudius Briquet and wife, with all the privileges and appurtenances thereunto belonging and subject to all the conditions of said deed. To have and to hold to the said party of the second part his heirs and assigns forever, and the said party of the first part will
64 hereby warrant and defend the title hereby conveyed, against himself his heirs and all other persons. In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

EDWD. C. SMITH. [SEAL.]

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this twenty-first day of May, 1874, before me, the undersigned, a notary public for and within the county aforesaid, came Edward C. Smith, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged the same to be his act and deed for the uses and purposes therein mentioned, and the said Edward C. Smith further states that he is single and unmarried.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year last above written.

CHAS. BOEMLER,
[SEAL.] *Notary Public.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder of said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd, at 10.40 o'clock a. m., 1874, and is truly recorded in Book 499, page 192.

Witness my hand and official seal the date last aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

I next offer a quitclaim deed of William F. Barsh and others to James L. D. Morrison, dated the 24th of April, 1874, acknowledged May 7th, 1874, and recorded June 3d, 1874:

65 *Deed.*

W. F. Barsh
to
J. L. D. Morrison.

This deed, made and entered into this twenty-fourth day of April, eighteen hundred and seventy-four by and between William F. Barsh and Augusta Georgia Barsh his wife, of the city of Charleston State of South Carolina, heirs of Samuel Hammond deceased, parties of the first part, and James L. D. Morrison of the city of St. Louis, State of Missouri, party of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of one hundred dollars to them paid by the said party of the second part, the receipt whereof is hereby acknowledged do by these presents, remise, release and forever quitclaim, unto the said party of the second part, the undivided two-thirds part ($\frac{2}{3}$rds) of all their interest and title in and to all the land in United States survey number twenty-five hundred (survey No. 2500) as located in township forty-five north (45 N.) in range seven east (R. 7 E.) in St. Louis county, Missouri which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (No. 161) and which was deed by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said Augusta G. Barsh by deed dated September 29th, A. D. 1823, and duly recorded in St. Louis county, it being the intent and meaning of this deed to convey to the said James L. D. Morrison the two undivided thirds of all the land in said survey No. 2500 to which we are entitled as heirs of Samuel Hammond through the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

66 W. F. BARSH.
AUGUSTA G. BARSH.

Signed, sealed and delivered in the presence of—

WM. P. DELAUSSURE,
F. W. CAPUS, JR.,
Witnesses to Signature of W. F. Barsh.
D. L. HAMMOND,
L. RANDALL,
Witnesses to Signature of Augusta G. Barsh.

STATE OF SOUTH CAROLINA, } ss:
County of Charleston, }

Be it remembered that on the seventh day of May, A. D. 1874, before the undersigned, a notary public within and for the county of Charleston and State of South Carolina, personally came William F. Barsh and Augusta Georgia Barsh, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Augusta G. Barsh, being by me first made acquainted with the contents of said instrument upon an examination separate and apart from her husband, acknowledged that she executed the same freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Charleston, the day and year first above written.

[SEAL.] A. C. PALFREY,
Notary Public.

STATE OF MISSOURI, } ss:
County of St Louis, }

I, the undersigned, recorder of said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd at 10.40 o'clock a. m., 1874, and is truly recorded in Book 503, page 2.

67 Witness my hand and official seal the date last aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

I next offer a deed of Thomas M. Price and Catherine V. Price, his wife, dated the 27th of April, 1874, and acknowledged the same day:

Deed.

T. M. Price & Wife
to
J. L. D. Morrison.

This deed, made and entered into this twenty-seventh day of April eighteen hundred and seventy-four by and between Thomas M. Price and Catherine V. Price his wife of the city of Charleston State of South Carolina, heirs of Samuel Hammond deceased, parties of the first part, and James L. D. Mossiron of the city of St. Louis State of Missouri, party of the second part, witnesseth: That the said parties of the first part, in consideration of the sum of one hundred dollars, to them paid by the said party of the second part, the receipt whereof is hereby acknowledged do by these presents remise, release and forever quitclaim, unto the said party of the second part, the undivided two-thirds part ($\frac{2}{3}$rds) of all their interest and title in and to all the land in United States survey number

twenty-five hundred (survey No 2500) as located in township forty-five north (45 N) in range seven east (R 7 E) in St. Louis county Missouri which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (No 161) and which was deed by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said Catherine V. Price by deed dated September 29th A. D. 1823, and duly recorded in St. Louis county. It being the intent and meaning of this deed to convey to the said James L. D. Morrison the two undivided thirds of all the land in said survey No 2500 to which we are entitled as heirs of Samuel Hammond through
68 the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges and appurtenances thereto belonging or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

THOMAS M. PRICE. [SEAL.]
CATHERINE V. PRICE. [SEAL.]

Signed sealed and delivered in the presence of—

C. MEZICK.
WILLIAM R. PARSELL.

STATE OF SOUTH CAROLINA, } ss:
County of Charleston, }

Be it remembered that on the twenty-seventh day of April, A. D. 1874, before the undersigned, a notary public within and for the county of Charleston and State of South Carolina, personally came Thomas M. Price and Catherine V. Price, his wife, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto and acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Catherine V. Price, being by me first made acquainted with the contents of said instrument upon an examination separate and apart from her husband, acknowledged that she executed the same freely and without fear, compulsion, or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Charleston, the day and year first above written.

[SEAL.] ALFRED PRICE,
Notary Public.

69 STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder of said county, hereby certify that the foregoing instrument of writing was filed for record in my office

June 3rd, at 10.40 a. m., 1874, and is truly recorded in Book 502, page 9.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

STATE OF MISSOURI, } ss :
City of St. Louis, }

I, the undersigned, the recorder of deeds, do hereby certify that the within instrument of writing was filed for record in my office April 24th, 1877, at 4.40 p. m., and is truly recorded in Book 568, at page 205.

Witness my hand and official seal the date last aforesaid.

[SEAL.] D. H. MACADAM, *Recorder.*

I next offer deed of David L. Hammond, of Charleston, South Carolina, dated the 27th of April, 1874, acknowledged the same day, and recorded June 3rd, 1874:

Deed.

J. L. Hammond
to
J. L. D. Morrison.

This deed, made and entered into this twenty seventh day of April eighteen hundred and seventy four by and between David L. Hammond of the city of Charleston State of South Carolina one of the heirs of Samuel Hammond deceased, party of the first part and James L. D. Morrison of the city of St. Louis, State of Missouri party of the second part, witnesseth: That the said party of the first part, in consideration of the sum of one hundred dollars, to him paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release
70 and forever quitclaim, unto the said party of the second part, the undivided two thirds part ($\frac{2}{3}$rds) of all his interest and title in and to all the land in United States survey number twenty five hundred (survey No. 2500) as located in township forty five north (45 N) in range seven east (R 7 E) in St. Louis county Missouri which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty one (No. 161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said David L. Hammond by deed dated September 29th A. D. 1823, and duly recorded in St. Louis county. It being the intent and meaning of this deed to convey to the said James L. D. Morrison the two undivided thirds of all the land in said survey No. 2500 to which I am entitled as heir of Samuel Hammond through the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges and appurtenances thereto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first — hath hereunto set his hand and seal the day and year first herein written.

D. L. HAMMOND. [SEAL.]
—— ——. [SEAL.]

Signed, sealed and delivered in the presence of—
W. D. PORTER.
JAMES G. PORTER.

STATE OF SOUTH CAROLINA, }
County of Charleston, } ss:

Be it remembered that on the twenty-seventh day of April, A. D. 1874, before the undersigned, a notary public within and for the county of Charleston and State of South Carolina, personally came David L. Hammond, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument
71 of writing as a party thereto, and acknowledged the same to be his act and deed for the purposes therein mentioned; and the said David L. Hammond further declares that he is unmarried.

In testimony whereof I have hereunto set my hand and affixed my official seal, at my office, in Charleston, the day and year first above written.

A. G. PALFREY,
[SEAL.] *Notary Public.*

STATE OF MISSOURI, }
County of St. Louis, } ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd, 1874, at 10.40 a. m., and is truly recorded in Book 495, page 452.

Witness my hand and official seal the date last aforesaid.
[SEAL.] W. C. KENNETT, *Recorder.*

I next offer the deed of Sarah G. Hammond, dated the 16th of May, 1874, and acknowledged the 24th of June, 1874, and recorded June 30th, 1874:

Deed.

Sarah G. Hammond }
to
J. L. D. Morrison. }

This deed, made and entered into this six-
(Revenue stamp.) teenth day of May eighteen hundred and seventy four by and between Sarah G. Hammond of the State of Arkansas party of the first part, and James L. D. Morrison of the city and county of Saint Louis and State of Missouri party of the second part, witnesseth: That the said party

of the first part, in consideration of ten ($10) dollars to pay by the said part- of the second part, the receipt whereof is hereby acknowledged, do by these presents, remise, release and forever quitclaim, unto the said party of the second part, the undivided two-
72 thirds part (⅔) of all her interest and title in and to all *her interest and title in and to all* the land in United States survey number twenty five hundred (survey 2500) as located in township forty five north (45 N) in range seven east (R 7 E) in Saint Louis county Missouri, which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty one (No. 161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said Sarah G. Hammond by deed dated September 29th, A. D. 1823, and duly recorded in Saint Louis county. It being the intent and meaning of this deed to convey to the said J. L. D. Morrison the two undivided thirds of all the land in said survey No. 2500 to which I am entitled as heir of Samuel Hammond through the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges and appurtenances thereto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set her hand and seal, the day and year first herein written.

SARAH G. HAMMOND. [SEAL.]

STATE OF ARKANSAS, }
County of St. Francis, } *ss:*

Be it remembered that on this twenty-fourth day of June, A. D. eighteen hundred and seventy-four, before me, the undersigned notary public, duly commissioned, came Sarah G. Hammond, personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged the same to be her act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and official seal this day and year first above written.

73 WM. H. HOWES,
[SEAL.] *Notary Public.*

STATE OF MISSOURI, }
County of St. Louis, } *ss:*

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 30th, at 1 p. m., A. D. 1874, and is truly recorded in Book 495, page 558.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

I next offer a deed of Charles L. Hammond, of Alabama, dated the 16th of May, 1874, acknowledged the same day, and recorded August 7th, 1874:

Deed.

C. L. Hammond
to
J. L. D. Morrison.

(Revenue stamp.) This deed, made and entered into this sixteenth day of May eighteen hundred and seventy-four by and between Charles L. Hammond and Sallie A. Hammond his wife of the State of Alabama party of the first part, and James L. D. Morrison of the city and county of St. Louis, in the State of Missouri party of the second part, witnesseth: That the said party of the first part, in consideration of ten ($10.00) dollars, to pay by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, remise, release and forever quitclaim, unto the said party of the second part, the undivided two-thirds (⅔rds) part of all their interest and title in and to all the land in United States survey (No. 2500) twenty-five hundred as located in township forty-five north (45 N.) in range seven east (R. 7 E.) in Saint Louis county Missouri, which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (No. 161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said Charles L. Hammond by deed dated September 29th A. D. 1823 and duly recorded in Saint Louis county. It being the intent and meaning of this deed to convey to the said J. L. D. Morrison the two-undivided thirds of all the land in said survey No. 2500 to which I am entitled as heir of Samuel Hammond through the said deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges and appurtenances thereto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

74

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

CHARLES L. HAMMOND. [SEAL.]
SALLIE A. HAMMOND. [SEAL.]

In the presence of these witnesses—
N. J. SKAGGS.
WM. R. HILLSMAN.
GREEN T. McAFEE.

STATE OF ALABAMA, }
County of Talladega, } ss:

Be it remembered that on this sixteenth day of May, A. D. eighteen hundred and seventy-four (1874), before me, the undersigned, came Charles L. Hammond and Sallie A. Hammond, his wife, per-

sonally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as part- thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Sallie A. Hammond, wife of said Charles L. Hammond, having been by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart
75 from her husband, that she executed the same and relinquished her dower in the real estate therein described freely, willingly, and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and official seal this day and year first above written.

(One dollar State of Ala. tax on seals.)

GREEN T. McAFEE,
[SEAL.] *Notary Public for the State of Alabama and County of Talladega.*

STATE OF MISSOURI, *County of St. Louis,* } *ss:*

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office August 7th, at 1.08 p. m., A. D. 1874, and is truly recorded in Book 497, page 361.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

I next offer deed of Samuel E. Hammond, of Arkansas, dated the 16th May, 1874, acknowledged the 24th of June, 1874, and recorded the 30th of June, 1874:

Deed.

S. E. Hammond
to
J. L. D. Morrison.

(Revenue stamp.) This deed, made and entered into this sixteenth day of May eighteen hundred and seventy-four by and between Samuel S. Hammond and Bettie A. P. Hammond his wife of the State of Arkansas parties of the first part, and James L. D. Morrison of the city and county of St. Louis in the State of Missouri party of the second part, witnesseth: That the said parties of the first part, in consideration of two hundred and fifty dollars, to pay by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents remise, release and forever quitclaim, unto the said party
76 of the second part, the undivided one-half (½) of all their interest and title in and to all the land in United States survey number twenty-five hundred (2500) as located in township forty-five north (45 N) in range seven east (R 7 E) in St. Louis county Mis-

souri, which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (No. 161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond grandfather of the said Samuel E. Hammond by deed dated September 29th A. D. 1823 and duly recorded in Saint Louis county. It being the intent and meaning of this deed to convey to the said James L. D. Morrison the one-half of all the land in said survey No. 2500 to which I am entitled as heir of Samuel Hammond through the deed of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights privileges and appurtenances thereto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

SAM'L E. HAMMOND. [L. S.]
BETTIE A. P. HAMMOND. [L. S.]

STATE OF ARKANSAS, } *sct:*
County of St. Francis, }

This day personally appeared before the undersigned, notary public, duly commissioned and qualified, Samuel E. Hammond, who, being first duly sworn, doth declare that he and his sister, Sarah G. Hammond, are grandchildren and heirs of the late Samuel Hammond, of Missouri, and that they resided within the so-called Confederate States during the entire period of the late civil war.

SAM'L E. HAMMOND.

77 Subscribed and sworn to before me this 24th day of June, 1874.

WM. H. HOWES,
Notary Public.

STATE OF ARKANSAS, } *ss:*
County of St. Francois, }

Be it remembered that on this twenty-fourth day of June, A. D. eighteen hundred and seventy-four, before me, the undersigned notary public, duly commissioned, came Samuel E. Hammond and Bettie A. P. Hammond, his wife, personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Bettie A. P. Hammond, wife of the said Samuel E. Hammond, having been by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart from her husband, that she executed the same and relinquished her dower in the real estate therein described freely, willingly, and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and official seal this day and year first above written.

[SEAL.] WM. H. HOWES,
Notary Public.

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 30th, A. D. 1874, at 1 p. m., and is truly recorded in Book 498, page 277.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

78 I next offer the deed of the Kingman branch of the family, the older ones, who were Hammond children—Mary A. E. Kingman, Anna W. McKie, Emma W. Kingman, and Julia S. Kingman—conveying to J. L. D. Morrison two-thirds interest, dated the 18th of May, 1874, acknowledged the same day, and recorded the third day of June, 1874.

Deed.

Mary A. E. Kingman *et al.*
to
J. L. D. Morrison.

(Revenue stamp.) This deed, made and entered into this eighteenth day of May eighteen hundred and seventy-four by and between Mary A. E. Kingman, Joseph S. McKie, and Anna W. McKie wife of the said Joseph S. McKie, Emma W. Kingman and Julia S. Kingman, all of the State of South Carolina parties of the first part, and James L. D. Morrison of the city and county of St. Louis in the State of Missouri party of the second part, witnesseth:

That the said parties of the first part, in consideration of the sum of one hundred dollars, to them paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, remise, release and forever quitclaim unto the said party of the second part, the undivided two-thirds part (⅔rds) of all their interest and title in and to all the land in United States survey number twenty-five hundred (2500) as located in township forty-five north (45 N) in range seven (7) east of the fifth principal meridian in St. Louis county Missouri, which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty-one (161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond, grandfather of the said parties of the first part, by deed dated September 20th 1823 and duly recorded in St. Louis county. It being the intent and meaning of this deed to convey to the

79 said James L. D. Morrison the two undivided thirds of all the land in said survey number 2500 to which we are entitled as heirs of Samuel Hammond through the said deed

of Rufus Easton and wife as aforesaid or otherwise. To have and to hold the same, with all the rights, privileges and appurtenances thereto belonging, or in anywise appertaining, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first herein written.

MARY A. KINGMAN. [L. S.]
JOSEPH S. McKIE. [L. S.]
ANNA W. McKIE. [SEAL.]
EMMA W. KINGMAN. [SEAL.]
JULIA S. KINGMAN. [SEAL.]

STATE OF GEORGIA, *Richmond County,* } ss:

Be it remember that on this eighteenth day of May, A. D. eighteen hundred and seventy-four, before me, the undersigned, Chas. E. Coffin, a notary public, came Mary A. E. Kingman, Joseph S. McKie, Anna W. McKie, Emma W. Kingman, and Julia S. Kingman, personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and they severally acknowledged the same to be their act and deed for the purposes therein mentioned; and the said Anna W. McKie, wife of the said Joseph S. McKie, having been by me first made acquainted with the contents of the foregoing instrument of writing, acknowledged, on an examination separate and apart from her said husband, that she executed the same freely, willingly, and without compulsion or undue influence of her said husband.

In testimony whereof I have hereunto set my hand and official seal this day and year first above written.

CHAS. E. COFFIN,
[SEAL.] *Notary Public, Richmond Co., Ga.*

80 STATE OF GEORGIA, *Richmond County,* } ss:

Personally came before me, Charles E. Coffin, a notary public in and for said county, Mary A. E. Kingman, Emma W. Kingman, Julia S. Kingman, and Anna W. McKie, who on oath say that they are each daughters and heirs of Mrs. Margaret Ellen Kingman, deceased, and that said Margaret Ellen Kingman was the eldest daughter and one of the five children and heirs of Samuel Hammond, formerly of Missouri Territory and State; that their mother was married to Samuel Kingman prior to the year 1842; that such intermarriage continued until the year 1853 or 1854, when our mother died, leaving us all minors; that we were all born in the State of South Carolina and have never been out of the so-called Confederate States of America.

MARY A. KINGMAN.
EMMA W. KINGMAN.
JULIA S. KINGMAN.
ANNA W. McKIE

Subscribed and sworn to this eighteenth day of May, A. D. 1874, before me—

CHAS. E. COFFIN,
[SEAL.] *Notary Public, Richmond Co., Ga.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd, at 10.40 a. m., A. D. 1874, and is truly recorded in Book 494, page 464.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

81 I next offer a deed of Mary Ann Washington, of Macon, Georgia, dated the 16th of May, 1874, acknowledged the same day, recorded the third of June, 1874, in consideration of $100 conveying two-thirds of her interest and title in and to all the lands in United States survey 2500.

Deed.

Mary A. Washington
to
J. L. D. Morrison.

(Revenue stamp.) This deed, made and entered into this sixteenth day of May eighteen hundred and seventy four by and between Mary A. Washington of the city of Macon in the State of Georgia party of the first part, and James L. D. Morrison of the city and county of Saint Louis in the State of Missouri party of the second part, witnesseth: That the said party of the first part, in consideration of one hundred dollars to pay by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents, remise, release and forever quitclaim, unto the said party of the second part, the undivided two thirds part (⅔rds) of all her interest and title in and to all the land in United States survey number twenty five hundred (survey 2500) as located in township forty five north (45 N) in range seven east (R 7 E) in St. Louis county Missouri, which land was located by Rufus Easton as the legal representative of Joseph Hunot upon New Madrid certificate number one hundred and sixty one (No 161) and which was deeded by Rufus Easton and Abial Easton his wife to Samuel Hammond father of the said Mary A. Washington by deed dated September 29th A. D. 1823 and duly recorded in Saint Louis county. It being the intent and meaning of this deed to convey to the said James L. D. Morrison the two undivided thirds of all the land in said survey No. 2500 to which I am entitled as heir of Samuel Hammond through the said deed of Rufus Easton

and wife as aforesaid or otherwise. To have and to hold the
82 same, with all the rights, privileges and appurtenances thereto belonging, or in anywise appertaining unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set her hand and seal, the day and year first herein written.

MARY ANN WASHINGTON. [L. S.]

JAMES WOOD,
Not. Pub., Bibb Co. Ga.

STATE OF GEORGIA, }
County of Bibb, } ss:

Be it remembered that on this sixteenth day of May, A. D. eighteen hundred and seventy-four, before me, the undersigned notary public, duly commissioned and qualified, came Mary A. Washington, personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged the same to be her act and deed for the purposes therein mentioned.

In testimony whereof I have hereunto set my hand and official seal this day and year first above written.

[SEAL.] JAMES WOOD,
Not. Pub., Bibb Co., Ga.

STATE OF GEORGIA, }
Bibb County, } ss:

Personally came Mary A. Washington, who on oath saith that she is the daughter and one of the heirs-at-law of Colonel Samuel Hammond, formerly of Missouri territory.

MARY ANN WASHINGTON.

Sworn to and subscribed before me this 16th day of May, 1874.

[SEAL.] JAMES WOOD,
Not. Pub., Bibb Co., Ga.

83 STATE OF MISSOURI, }
County of St. Louis, } ss:

I, the undersigned, recorder for said county, certify that the foregoing instrument of writing was filed for record in my office June 3rd, at 10.40 a. m., A. D. 1874, and is truly recorded in Book 499, page 192.

Witness my hand and official seal the date aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

The COURT: Is that quitclaim?

Mr. JEWETT: She quitclaims at the beginning and at the conclusion says: "It being the intent and meaning of this deed to convey to James L. D. Morrison two undivided thirds of the land in said survey which I am entitled to as the heir of Samuel Hammond, etc.

The COURT: She had previously quitclaimed to Darby.

Mr. JEWETT: I think there is no doubt she had given a naked quitclaim to Darby of one-half of the survey.

The COURT: It would leave half in her at the time she conveyed to Morrison.

Mr. JEWETT: Half of the survey. She conveyed half of the whole survey, when, in fact, she didn't own but one-fifth of one-half.

The COURT: I suppose it would be good to carry one-half of all she had.

Mr. JEWETT: I suppose it would carry one-half of all the interest she had. She says she is the sole heir of Samuel Hammond, and she conveys one-half of the whole survey. Now, the question is whether she only conveyed half. I think it took all the title she had out of her. We claim the deed to Morrison is good. That deed was recorded, and, as we say, the existence of the Darby deed was entirely unknown to Morrison and not known until six years
84 afterwards.

The COURT: You made a remark that you dismissed as to Mrs. Washington.

Mr. JEWETT: I did, because, to say nothing about the Darby deed, this deed would leave one-third of her interest in her, and that third she subsequently conveyed after we brought suit. She subsequently conveyed that interest, which was a *bona fide* interest, to Fisher, and Fisher conveyed to the defendants, and therefore we dismissed it, she being formerly a party plaintiff, having one-third of one-fifth, and we dismiss as to her, because she conveyed all that interest, first to Fisher and then Fisher to Wade and Wade to the defendant, and we claimed the interest which Morrison acquired by virtue of this deed; in other words, we claim under this deed two-thirds of one-fifth of the interest Samuel Hammond possessed when he died.

The COURT: That completes your chain of title according to the abstract.

Mr. JEWETT: That completes our chain of title. We have the report of the testimony of one of the Hammond-, which we took at the first trial, and by agreement it may be read in this case. The testimony of Samuel E. Hammond is already on page 5 (page 56 of this transcript). It is in relation to his heirship. We put that in connection with the testimony of Collett taken in the Hammond case, page 189, which shows that he is an expert and perfectly familiar with the deeds of the county and had carefully examined all the deeds for several years about 1819, and that there was no deed of record from Easton to Ashley, and that explains what we say is the mistake in Easton's deed in reciting it to Ashley.

85 *Testimony of Oscar W. Collet.*

By Mr. JEWETT: Now, I wish to show you the seals of the circuit court. For instance, there is one on that paper dated January 16th, 1824, a few weeks after the sheriff's deed is acknowledged, which is the 27th of January, 1824. Now, will you take that seal and say whether you have examined the old sheriff's deed?

A. Yes, sir; I have looked at it carefully.

Q. With the magnifying glass?

A. Yes, sir.

Q. Can you discover or not any indications of any such seal as the circuit court seal on that paper?

A. No, sir; nothing like it; no indications of anything of this kind.

Q. Can you say whether in your opinion there ever was any seal or impression of a seal on that sheriff's deed?

A. Well, it is my opinion that there never has been one.

Q. You have examined it carefully, have you?

A. I have examined it in every way I could; in a direct light and in a glancing light, in a strong light and with a shadow on it. I have examined it with eyeglass and magnifyer. I have examined this surface and compared the surface in every way to see whether it has been disturbed, and I find no trace of a seal about it.

That is our case except as to the agreement in regard to rents and profits.

Mr. MORRISON: The agreement has been heretofore that the rents offset the taxes, and we agree to it now, and if we recover we recover for one dollar.

The COURT: You can file a stipulation as to the rents and taxes.

Plaintiffs close, and the court thereupon adjourned until to-morrow, October 24th, 1882.

86 ST. LOUIS, *October 24th*, 1882.

The hearing of this case was resumed, and defendants introduced testimony to sustain the issues on their part.

First, a deed, dated December 5th, 1834, from Joseph Hunot and wife to Peter Lindell, acknowledged the 6th of December, 1834, and recorded in Book U, page 168, and following:

Deed.

Jos. Hunot & Wife
to
P. Lindell.

This indenture, made this 5th day of December, in the year of our Lord one thousand eight hundred and thirty-four, by and between Joseph Hunot and Elizabeth Hunot, his wife, of the town of New Madrid and State of Missouri of the one part, and Peter Lindell of the county of St. Louis and State aforesaid of the other part (witnesseth), that for and in consideration of the just and full sum of five dollars, good and lawful money of the United States to them in hand paid by the said Peter Lindell, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and do by these presents give, grant, bargain and quitclaim unto the said Peter Lindell, his heirs, assigns forever, all the right, title and in-

terest and claim, be the same more of less, either in law or equity of them, the said Joseph Hunot and wife in and to the following-described tract or parcel of land, (to wit:) situate in the county of St. Louis, State of Missouri, and being four hundred and eighty acres located by virtue of a New Madrid certificate number one hundred and sixty-one in the name of Joseph Hunot or his legal representatives, in township number forty-five, north of the base line of range number seven east of the fifth principal meridian, and being survey number two thousand five hundred, reference to its survey recorded in the surveyor's office in St. Louis, will more fully and at large appear: To have and to hold said tract or parcel of land, with all the rights, privileges and advantages thereunto belonging or in anywise appertaining unto him the said Peter Lindell, and
87 to his heirs and assigns forever free from all and every person or persons claiming the same, through by or under them the said Hunot and wife.

In testimony whereof they, the said Joseph Hunot and Elizabeth Hunot, his wife, have hereunto set their hands and affixed their seals the day and date first above written.

his
JOSEPH x HUNOT. [SEAL]
mark

her
ELIZABETH x HUNOT. [SEAL]
mark

Signed, sealed and delivered in the presence of
JAMES TANNER
WM W. HUNTER

STATE OF MISSOURI, } 88:
County of New Madrid, }

Be it remembered that on this sixth day of December, in the year of our Lord one thousand eight hundred and thirty-four, before me, one of the judges of the county court within and for the county of New Madrid, personally came Joseph Hunot and Elizabeth Hunot, his wife, both personally known to me (Richard C. Johnson) to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledged the same to be their act and deed for the purposes therein mentioned. She, the said Elizabeth, being by me first made acquainted with the contents thereof and examined separate and apart from her husband whether she executed the said deed and relinquished her dower to the lands and tenements there mentioned voluntarily and freely and without compulsion or undue influence of her said husband, acknowledged and declared that she executed the said deed and relinquished *in* the said land and tenements therein mentioned voluntarily, freely, without compulsion or undue influence of her said husband.

Taken*ed* and certified the day and year aforesaid.
88 R. C. JOHNSON,
Justice of the County Court.

STATE OF MISSOURI, }
County of St. Louis, } *ss:*

I, Archibald Gamble, clerk of the circuit court and *ex officio* recorder for the county of St. Louis, do certify that the foregoing deed is truly recorded in my office, in Book "U," page 168, and following.

Given under my hand and seal of office this 22d day of December, 1834.

ARCHIBALD GAMBLE, *Recorder.*

Mr. HENDERSON (defendants' counsel): I will read a stipulation the parties have entered into. The parties in the above cause stipulate and agree that the following-mentioned depositions and testimony of witnesses, documents, and other evidence may be read in evidence in the above cause by either party, subject to all objections on the ground of incompetency, irrelevancy, and incredibility, to wit, first, all or any of the documents, depositions, and testimony of witnesses and statements and admissions and other evidence contained in the reporter's notes of evidence, etc.

Stipulation as to Evidence.

In the Circuit Court of the City of St. Louis, Room No. 2.

DAVID L. HAMMOND *et als.*
against
LEVIN H. BAKER and CLARA A. BAKER, His Wife. } Case 30072.

The parties in the above cause stipulate and agree that the following-mentioned depositions and testimony of witnesses, document-, and other evidence may be read in evidence in the above cause by either party, subject to all the objections on the grounds of incompetency, irrelevancy, and incredibility, to wit:

89 First, all or any of the documents, depositions, and testimony of witnesses and statements and admissions and other evidence contained in the reporter's notes of evidence or in the printed record of the cause in the supreme court of the State of Missouri, which was appealed from the St. Louis court of appeals, wherein David L. Hammond *et al.* are appellants and Nathan Coleman and Sarah L. Coleman, his wife, are respondents; and, second, all depositions of witnesses heretofore taken in any of the suits between said David L. Hammond *et als.* and any other person or persons for the possession of the whole or any part of United States survey 2500, in the State of Missouri, in the name of Joseph Hunot or his legal representatives; third, it is admitted that Peter Lindell in the year 1831 took actual, open, notorious, exclusive, and adverse possession of the land within said United States survey 2500 and continued in such possession thereof, claiming title thereto until his death, in October, 1861, and that from the time of his said death his heirs and those claiming under them have continued up to the time of the date hereof in the said actual, open, notorious, exclusive, and adverse possession of said land, claiming to be the owners of

the same; and it is further admitted that the said Levin H. Baker and Clara A., his wife, acquired whatever right, title, or interest the said Peter Lindell or his heirs ever owned, had, or held in or to the land in suit in this cause, and were in possession of the same at the time of the commencement of this suit, and that the said Walter S. Johnson is now in the possession thereof as the successor of said Levin H. Baker and wife, claiming whatever title they had by purchase from them; fourth, either party to the suit may introduce on the trial, in addition to the facts contained in the record above named, any other or further evidence, either written or oral, that may be competent or relevant to the issues raised in the case.

D. T. JEWETT, *Att'y for Pl'ffs.*

90 JAS. L. D. MORRISON,
Att'y for Himself.

J. B. HENDERSON &
E. CASSELBERRY,
For Defendants.

Mr. HENDERSON: I desire to put in evidence a record of a judgment and execution, sale, and deed of the sheriff, John K. Walker, in 1823 of all right, title, and interest of Hammond in this land.

Mr. JEWETT: As far as the deed is concerned, we shall insist he shall not read a copy. As far as the record is concerned, as a judgment and all that sort of thing, we don't object to the copy.

Mr. HENDERSON: I understand Mr. Jewett will present no objection to the judgment and execution, the advertisement, and the sale, but he does object to my introducing the record of the deed, because he contends he has the original deed, and that there is wanting the seal of the circuit court that Mr. Archibal Gamble failed to attach—the seal of acknowledgment of the sheriff.

Record, Relf, Chew, et al. vs. S. Hammond.

Judgment.

RICHARD RELFE, BEVERLY CHEW, and MARY CLARK
vs.
SAMUEL HAMMOND.

On the first Monday in August, in the year eighteen hundred and nineteen, come the parties aforesaid, by their respective attorneys aforesaid, and, neither of the parties requiring a jury, all and singular the premises are by them submitted to the court, which being seen and heard by the court here — fully understood, the court do find, as to the issues within joined between the parties aforesaid, Samuel did undertake and promise in manner and form as the said plaintiffs in declaring have above thereof alleged against him, and they assess the damages of the said Richard, Beverly, and Mary by them sustained by reason of the
91 non-performance of the premises and undertakings in the declaration mentioned to six thousand eight hundred and

forty-one dollars and eighty and one-half cents; therefore it is considered that the said Richard Relfe, Beverly Chew, and Mary Clark recover against the said Samuel Hammond their damages aforesaid in form aforesaid by the court assessed, together with their costs and charges by them about their suit in this behalf expended, and that they have thereof execution; to which foregoing judgment the defendant, by his attorney aforesaid, excepts and files his bill of exceptions in the words following to wit: The plaintiff proved that the money had been received by the defendant on sale of lands belonging to the estate of Daniel Clark, deceased, which sale the said defendant had been authorized to make by a power of attorney from the said Relfe and Chew, executors of the said Daniel Clark and attorneys-in-fact of the said Mary Clark, sole legatee and heir of the said Daniel Clark, deceased. The defendant gave in evidence a power of attorney from Mary Clark to Richard Relfe and Beverly Chew, which is in the words and figures following: Know all men by these presents that I, Mary Clark, of Germantown, in the county of Philadelphia and State of Pennsylvania, widow, mother, and sole heir, devisee, and legatee of Daniel Clark, late of the city of New Orleans and State of Louisiana, Esquire, deceased, have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute, and appoint, and in my place and stead put and depute Beverly Chew and Richard Relfe, of the city of New Orleans, merchants and executors of the last will and testament of the said Daniel Clark, deceased, jointly and severally to be my true and lawful attorneys and attorneys for me and in my name, to my use and in my behalf, to take possession of and to hold all and every part and parcel of the real and personal estate of the said deceased; to manage, direct, bargain, agree for, and make sale of the same
92 or any part thereof; to let, lease, rent, or occupy the real estate, and to ask, demand, sue for, and by all lawful ways and means recover and receive of and from all and every person or persons, bodies politic or corporate, whatsoever whom it shall, doth, or may concern all such sum and sums of money, debts, and effects whatsoever and of what kind soever as are or may be due, owing, payable, or belonging to me as sole legatee, devisee, or heir-at-law of the said Daniel Clark, deceased, or under or by his last will and testament, whether by mortgage, bond, bill, book, debt, account, contract, covenant, bargain, agreement, or otherwise, by what other reason or means soever, none excepted or reserved, and to that end, with whom it may concern, to settle and adjust all accounts and the balance thereof to receive, and on receipt in the premises to give one or more acquittances and discharges in due form of law; also, for me and in my name and as my act and deed, to make, seal, execute, and deliver such act and acts, deed and deeds, as may be needful or necessary for the conveyance or assurance of any real estate, *as* for the leasing or selling of the same for a term of years or otherwise, *as* for the assignment or conveyance of any estate or effect, real or personal, and if need be to appear before any tribunal, judges and justices in any court or courts, thereto to do, say, pursue, implead, arrest, attach, and prosecute as occasion shall be and required; also

to compound, compromise, conclude, and agree for the same or any way or manner respecting the premises, by abstraction or otherwise, as my said attorneys or either of them shall think fit, and generally in the premises to do, execute, and perform all and whatsoever shall be requisite and necessary in as full and ample manner, to all intents and purposes, as I could do if personally present, with power of substitution for all or any of the purposes hereinbefore
93 mentioned and for the revoking of the same, hereby promising to ratify and hold for good and valid all and whatsoever my said attorneys or either of them may lawfully do and cause to be done by virtue hereof.

In witness whereof I have hereunto set my hand and seal this first day of October, in the year of our Lord one thousand eight hundred and thirteen.

MARY CLARK. [SEAL.]

Sealed and delivered in the presence of us—
MARY SWEENEY.
THOMAS SPARKWITH.
DANIEL W. COX.

Assignment of Errors in the Supreme Court.

[Superior Court, Northern Circuit, April Term, 1820.

SAMUEL HAMMOND *vs.* RICHARD RELFE, BEVERLY CHEW, and MARY CLARK. } In Error. Assignment of Errors.

Afterwards, to wit, on the fourth Monday of April, at this same term of April, before the judges of the said superior court of the Territory of Missouri, sitting for the northern circuit at the town of St. Louis, in the county of St. Louis, comes the said Samuel Hammond, by Pettibone, his attorney, and says that in the record and proceedings aforesaid and also in giving the judgment aforesaid there is manifest error in this, to wit, that the declaration aforesaid and the matters and things therein contained were not sufficient in law for the said Richard Relfe, Beverly Chew, and Mary Clark to have and maintain their aforesaid action thereof against the said Samuel Hammond; there is error also in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for said Richard Relfe, Beverly Chew, and Mary Clark against the said Samuel Hammond, whereas by the law of the land the said judgment ought to have been given for
94 the said Samuel Hammond against the said Richard Relfe, Beverly Chew, and Mary Clark; and there is error also in this, to wit, that from the evidence detailed in the bill of exceptions it appears that the plaintiffs were jointly interested in the demand for which this suit was brought; and the said Samuel Hammond prays that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings aforesaid may be reversed, an-

nulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by the occasion of the said judgment, &c.

PETTIBONE,
Attorney for Pl'ff in Error.

NOVEMBER 7TH, 1822.

RICHARD RELFE, BEVERLY CHEW, and MARY CLARK
ad.
SAMUEL HAMMOND.

Now, at this day, come again the parties aforesaid, by their attorneys aforesaid, and the court now here, being fully advised of and concerning the premises, consider that the judgment aforesaid, in form aforesaid rendered, be affirmed and in all things stand in full force and effect; and it is further considered and adjudged by the court that the said Richard Relfe, Beverly Chew, and Mary Clark do recover of the said Samuel Hammond their costs and charges by them about their defense in this behalf expended, and that they have thereof execution.

NOVEMBER 16TH, 1822.

SAMUEL HAMMOND
vs.
RICHARD RELFE and Others.

It is ordered by the court that the motion made by Mr. Benton, being of counsel for the plaintiff in error, for a rehearing in
95 this case be continued until the next term, and that the said defendants in error forbear to take out their execution on the judgment aforesaid until the next term of this court.

MAY 22, 1823.

SAMUEL HAMMOND
vs.
RELFE, CHEW, and CLARK. } Error from St. Louis Circuit Court.

And now, at this day, come the parties aforesaid, by their respective attorneys aforesaid, and the court now here, being sufficiently advised of and concerning the premises, consider that the judgment aforesaid in form rendered be in all things affirmed and stand in full force and effect; and it is further considered and adjudged by the court that the said Richard Relfe, Beverly Chew, and Mary Clark recover against the said Samuel Hammond their costs and charges by them about their defense in this behalf expended, and that they have thereof execution.

Execution.

STATE OF MISSOURI,
Third Judicial District.

The State of Missouri to the sheriff of St. Louis county, Greeting:
Whereas Richard Relfe, Beverly Chew, and Mary Clark, at our

supreme court for the third judicial district, before our judges thereof, recovered against Samuel Hammond the sum of six thousand eight hundred and seventy-seven dollars and forty-three and a half cents, which to the said Relfe, Chew, and Clark was adjudged for their damages which they sustained as well by reason of the non-performing certain promises and undertakings as for their costs and charges by them about their suit in this behalf expended, as appears to us of record. These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Samuel Hammond you cause to be made the damages and costs aforesaid, and that you have the same before the judges of our said court on the first Mon-
96 day of November next, to render the said Relfe, Chew, and Clark the damages and costs aforesaid; and for want of sufficient goods and chattels, lands and tenements, of the said Samuel Hammond whereon to levy and make the same, we command you that you take the said Samuel Hammond, if he be found in your bailiwick, and him safely keep, so that you have his body before the same judges on the said first Monday in November next, to satisfy the said Relfe, Chew, and Clark the damages and costs aforesaid, and that you certify to our said judges how you execute this writ, and have you then and there this writ.

Witness Thompson Douglass, clerk of our supreme court for the third judicial district.

In testimony whereof I have hereunto affixed my name and seal of office, at office, in the city of St. Louis, this 28th day of May, in the year of our Lord one thousand eight hundred and twenty-three, and of the Independence of the United States of America the forty-seventh.

[SEAL.] TH. DOUGLASS, *Clk.*

Clerk's Endorsement.

No. 3, November term, 1823.

RELFE, CHEW, and CLARK *vs.* SAMUEL HAMMOND. } Execution.

Debt	$6,841 80½
Clerk Gamble	9 32
" Garnier	5 50
" Nelson	2 45
" sup. court	4 40
Att'y Benton	6 00
Writ of execution	3 00
Sheriff Brown	4 96
	$6,877 43½
Ex. and tax	2 00
	$6,879 43½

97 Interest from August term, 1819.
May 28.

Sheriff's Endorsement.

Rec'v'd May 28, 1823.

JNO. SIMONDS, JR., *D. Sh'ff.*

Sheriff's Return.

Made on this execution by the sale of the property described in the enclosed advertisement the sum of four hundred and eighty dollars, which satisfies of the debt four hundred and twenty-seven dollars and seventy-seven cents, after deducting the costs. Richard Relfe and Beverly Chew were the purchasers, October 8th, 1823. No other property of the defendant being found in my county, I did on the 31st day of October, 1823, take the body of the said Samuel Hammond, and afterwards, on the same day, discharge the same from custody by order of John Mullanphy, the plaintiff's agent.

$427.77.

JOHN K. WALKER, *Sheriff.*

Sheriff's Advertisement.

"Sheriff's sale."—By virtue of a writ of execution to me directed from the supreme court for the 3d judicial district, in favor of Richard Relfe, Beverly Chew, and Mary Clark against Samuel Hammond, I have levied upon and will sell for cash to the highest bidder, at the court-house door in the city of St. Louis, on Wednesday, the 8th day of October next, between the hours of 9 and 4, all the right, title, estate, and property of said Hammond in and to a tract of land situate in the prairie near the late residence of John B. N. Smith, containing 2½ arpens front by 40 arpens deep. Also 240 arpens of land west of St. Louis, bounded south by land of Gratiott & Phillipson, west by land of Cabanne, and east by land of Stokes and others. Also a lot of ground and house in St. Louis, called
98 the Yellow house, bounded east by 3rd street, south by a cross-street, west by a lot of the estate of Irvin, and north by a lot heretofore the property of Col. Easton. Also one other lot, with a brick house thereon, situated on Third street, bounded west by said 3d street, south by South D street. Also two lots on the hill in St. Louis, near the late residence of Moses Scott. Also a lot of ground, with a two-story white house thereon, in St. Louis, bounded west by Church street, south and east by a lot of Daniel Freeman. Lastly, one vacant lot bounded west by Church street, north by South "C" street, and south by the lot last above mentioned. The extent, &c., of said lot will be given on the day of sale. Sold to satisfy said execution and costs.

St. Louis, September 5th, 1823.

JOHN K. WALKER, *Sheriff.*

STATE OF MISSOURI, *sct.*:

I, Hampton L. Boon, clerk of the supreme court of the State of Missouri, do hereby certify that the foregoing is a full, true, and com-

plete copy of an execution found on file amongst the papers of my office in favor of Richard Relfe, Beverly Chew, and Mary Clark and against Samuel Hammond, together with the endorsements thereon made; and I further certify that the foregoing advertisement of John K. Walker, sheriff, for the sale of property in said advertisement mentioned *if* fully and accurately from a paper appended by wafer to the said execution.

Given under my hand, with the seal of said supreme court affixed, at office, in the city of Jefferson, this fifth day of August, in the year of our Lord one thousand eight hundred and forty-five.

[SEAL.] H. L. BOON.

In the Circuit Court of St. Louis County, October Term, 1823.

TUESDAY, *November* 4, 1823.

99 John K. Walker, sheriff of the county of St. Louis, acknowledges here in court the execution of a deed from him as sheriff aforesaid to Richard Relfe — Beverly Chew for the following-described real estate, to wit: First, a tract of land lying in the old common fields of St. Louis, containing two and a half arpens front (eastwardly) by forty deep (more or less), bounded west by land belonging to the estate of Charles Gratiott, the other boundaries of which are to me unknown; second, a tract of land containing two hundred and forty arpens, more or less, bounded on the south by land of Gratiott & Phillipson, on the west by the land of John P. Cabanne, and on the east by land of William Stokes and others, and includes the big spring known by the name of Hammond's spring; third, a lot of ground in the city of St. Louis, containing sixty-four feet front on Third street by one hundred feet deep (more or less) and bounded on the east by said Third street, on the south by a cross-street called South C street, on the west by a lot belonging to the estate of James Irvin, and on the north by a lot heretofore the property of Col. Rufus Easton, on which lot stands the house known by the name of Hammon's yellow house; fourth, a lot of ground containing twenty-eight feet, English measure, front on Third street by one hundred and fifty feet, French measure, in depth, and bounded on the west by said Third street, on the south by a cross-street called South D, on the east by a lot of Alexander Bellisaime, and on the north by a lot of John Beaufitz—on this lot stands a two-story brick house; fifth, two lots of ground situated in St. Louis, containing two hundred and twenty-two feet from east to west by one hundred and fifteen feet from north to south, and bounded on the south by a cross-street called South B street, on the west by Fifth street, on the north by a lot belonging to the estate of William Sullivan, and

100 on the east by Fourth street, and is the same acquired by said Hammond, jointly with Moses Scott, of Auguste Chouteau and wife; sixth, a lot of ground containing twenty feet front by eighty feet deep and bounded on the west by Church street, on the south and east by a lot of Daniel Freeman, and on the north by a lot hereinafter described—on this lot stands a two-story white house; seventh, a vacant lot containing sixty feet front by forty feet

deep, French measure, and bounded on the west by Church street, on the north by a cross-street, on the east by a lot heretofore the property of Christian Smith, and on the south by a lot last above described. Sold as the property of Samuel Hammond by virtue of a writ of execution issued from the supreme court of the State of Missouri in favor of Richard Relfe, Beverly Chew, and Mary Clark against said Samuel Hammond, and was purchased by the said Richard Relfe — Beverly Chew, they being the highest and last bidders for the same, at the price and sum of four hundred and eighty dollars.

A true copy from the record.
Attest with seal of court:

[SEAL.] J. FRED. THORNTON, *Clerk.*

Plaintiffs objected to the sheriff's returns on the executions, and the court excluded the same. Defendants duly excepted.

Mr. JEWETT: Not that I have it, but you have it.

Mr. HENDERSON: No; we haven't it; but we will come to that after-while.

I then offer and will read from this record instead of from the original manuscript copies under agreement a certified copy of the deed of John K. Walker to Relfe and Chew under the judgment, execution, and advertisement which I have offered:

101 *Certified Copy of Sheriff's Deed, Relf & Chew.*

By virtue of a writ of execution to me directed from the supreme court for the third judicial district, in favor of Richard Relfe, Beverly Chew and Mary Clark against Samuel Hammond, I have levied upon and will sell for cash to the highest bidder, at the court-house door, in the city of St. Louis, on Wednesday, the 8th day of October next, between the hours of nine and four, all the right, title, estate and property of said Hammond in and to a tract of land, situated in the prairie, near the residence of John B. N. Smith, containing 2½ arpents front by 40 arpents deep; also 240 arpents of land west of St. Louis, bounded south by land of Gratiot and Philipson, west by land of Cabanne, and east by land of Stokes and others. Also a lot of ground and house in St. Louis, called yellow house, bounded east by Third Street, south by a cross street and west by a lot of the estate of Irwin, and north by a lot heretofore the property of Col. Easton. Also one other lot with a brick house thereon, situated on Third street, bounded west by said Third street, south by South D street. Also two lots on the hills in St. Louis, near the late residence of Moses Scott. Also a lot of ground with a two story white house thereon in St. Louis, bounded west by Church street, south and east by a lot of Daniel Freeman. Lastly, one vacant lot, bounded west by Church street, north by South C street, and south by the lot last above mentioned, the extent, &c.,

of said lots will be given on the day of sale. Sold to satisfy said execution and costs.

JOHN K. WALKER, *Sheriff.*

St. Louis, September 5th 1823.

The above is a true copy of the advertisement.

JOHN K. WALKER, *Sheriff.*

102 STATE OF MISSOURI, } *Set:*
Third Judicial District, }

The State of Missouri to the sheriff of St. Louis county, Greeting:

Whereas Richard Relf, Beverly Chew, and Mary Clark, at our supreme court for the third judicial district, before our judges thereof, recovered against Samuel Hammond the sum of six thousand eight hundred and seventy-seven dollars forty-three and a half cents, which to the said Relfe, Chew, and Clark was adjudged for their damages, which they sustained as well by reason of the non-performing certain promises and undertakings as for their costs and charges by them about their suit in this behalf expended, as appears to us of record: These are therefore to command you, as we have heretofore commanded you, that of the goods and chattels, lands and tenements, of the said Samuel Hammond you cause to be made the damages and costs aforesaid, and that you have the same before the judges of our said court on the first Monday of November next, to render to the said Relfe, Chew, and Clark the damages and costs aforesaid, and for want of sufficient goods and chattels, lands and tenements, of the said Samuel Hammond whereon to levy and make the same, we command you that you take the said Samuel Hammond, if he be found in your bailiwick, and him safely keep, so that you have his body before the same judges on the said first Monday of November next to satisfy the said Relfe, Chew, and Clark the damages and costs aforesaid, and that you certify to our said judges how you execute this writ, and have you then and there this writ.

Witness Thompson Douglass, clerk of our supreme court for the third judicial district.

In testimony whereof I have hereunto affixed my name and seal of office, at office, in the city of St. Louis, this 28th day of May, in the year of our Lord one thousand eight hundred and twenty-three, and of the Independence of the United States of America the forty-seventh.

103 [SEAL.] TH. DOUGLASS, *Clerk.*

The above is a true copy of the execution.

JOHN K. WALKER, *Sheriff.*

To all to whom these presents shall come I, John K. Walker, sheriff of the county of St. Louis, in the State of Missouri, send greeting:

Whereas a certain writ of execution issued from the clerk's office of the supreme court for the third judicial district of the State of

Missouri, returnable to the November term of said court, in the year one thousand eight hundred and twenty-three, in favor of Richard Relfe, Beverly Chew, and Mary Clark against Samuel Hammond, and the said writ of execution being directed to the sheriff of St. Louis county, and to me, the said sheriff, delivered, a copy whereof is hereunto annexed and makes a part and parcel of this deed, by virtue of which said writ of execution I, the said sheriff, on the fifth day of September, in the year of our Lord one thousand eight hundred and twenty-three, did levy upon and seize all the right, title, interest, estate, and property of the said Samuel Hammond in and to the following-described real estate, to wit: First, a tract of land situated, lying, and being in the old common fields of St. Louis, containing two and one-half arpents front (eastwardly) by forty arpents deep (more or less), bounded west by land belonging to the estate of Charles Gratiot, the other boundaries of which are to me unknown; second, a tract of land containing two hundred and forty arpents, more or less, bounded on the south by land of Gratiot and Philipson, on the west by land of John P. Cabanne, and on the east by land of William Stokes and others, and includes the big spring known by the name of Hammond spring; third, a lot of ground in the city of St. Louis containing sixty-four feet front on Third street by one hundred feet deep (more or less), and bounded on the
104 east by said Third street, on the south by a cross-street called south C street, on the west by a lot belonging to the estate of James Irwin, and on the north by a lot heretofore the property of Col. Rufus Easton, on which lot stands the house known by the name of Hammond's yellow house; fourth, a lot of ground containing twenty-eight feet, English measure, front on Third street by one hundred and fifty feet, French measure, in depth, and bounded on the west by said Third street, on the south by a cross-street called south D street, on the east by a lot of Alexander Bellissme, and on the north by a lot of John Beaufitz. On this lot stands a two-story brick house, and is the same house and lot acquired by said Hammond of Thompson P. Williams, as will appear by reference to the deed bearing date the fourth day of August, eighteen hundred and twenty, and duly recorded in the recorder's office of St. Louis county in Book I, page 461; fifth, two lots of ground in that part of or addition to St. Louis laid off by John B. C. Lucas and Auguste Chouteau, containing two hundred and twenty-two feet from east to west by one hundred and fifteen feet from north to south, and bounded on the south by a cross-street called south B street, on the west by Fifth street, and on the north by a lot belonging to the estate of William Sullivan, and on the east by Fourth street, and is the same acquired by said Hammond jointly with Moses Scott of Auguste Chouteau and wife by deed bearing date the twenty-seventh day of May, eighteen hundred and sixteen, and recorded in the recorder's office of St. Louis county in Book F, page 66; sixth, a lot of ground containing twenty feet front by eight feet deep and bounded on the west by Church street, on the south and east by a lot of Daniel Freeman, and on the north by a lot hereinafter described. On this lot stands a two-story white house, and is the same house and lot

acquired by said Hammond of Daniel Shope and wife; seventh, a vacant lot containing sixty feet front by forty feet deep,
105 French measure, and bounded on the west by Church street, on the north by a cross-street, and on the east by a lot heretofore the property of Christian Smith and on the south by the lot last above described, and is the same lot acquired by said Hammond of Christian Smith by deed bearing date the fifteenth day of November, eighteen hundred and nineteen, and recorded in the recorder's office of St. Louis county in Book K, page 152, together with all and singular the buildings, improvements, rights, and privileges to the aforesaid tracts of land and town lots in anywise appertaining, and the same being advertised agreeably to law, as will appear from a copy of the advertisement hereunto annexed and which also makes a part and parcel of this deed; by virtue of which said writ of execution I did, on the eighth day of October, in the year eighteen hundred and twenty-three, agreeably to the advertisement thereof, at the court-house door, in the city of St. Louis, during the sitting of the St. Louis county circuit court, expose to public sale for ready cash all the right, title, and interest, estate, and property of the said Samuel Hammond in and to the above-described tracts of land and town lots, and Beverly Chew and Richard Relfe being the highest and last bidders for the same at the prices and sums as follows, to wit: For the first-mentioned tract of land, the sum of sixty dollars; for the second, the sum of one hundred dollars; for the third (being a house and lot), the sum of twenty dollars; for the fourth, the sum of one hundred dollars; for the fifth, the sum of fifty dollars; for the sixth, the sum of one hundred and thirty dollars; for the seventh, the sum of twenty dollars, making in all the sum of four hundred and eighty dollars, the same were stricken off and sold to them, the said Beverly Chew and Richard Relfe: Now, therefore, know ye that I, John K. Walker, sheriff as aforesaid, for and in consideration of the sum of four hundred and eighty dollars, to me in hand paid by the said Beverly
106 Chew and Richard Relfe, the receipt whereof I do hereby acknowledge, and by virtue of the authority in me vested by law I do hereby transfer and assign to them, the said Beverly Chew and Richard Relfe, all the right, title, interest, estate, and property of him, the said Samuel Hammond, in and to the above-described tracts of land and town lots that I might sell agreeably to law as sheriff as aforesaid by virtue of the aforesaid writ of execution and advertisement; to have and to hold said tracts of land and town lots to them, the said Beverly Chew and Richard Relfe, and to their heirs and assigns forever.

In witness whereof I, John K. Walker, sheriff of the county of St. Louis, have hereunto set my hand and seal this fourth day of November, eighteen hundred and twenty-three.

JOHN K. WALKER, *Sheriff.* [SEAL.]

STATE OF MISSOURI, }
County of St. Louis, } ss:

Be it remembered that on this fourth day of November, in the

year of our Lord one thousand eight hundred and twenty-three, John K. Walker, sheriff of St. Louis county, personally appeared in open court and acknowledged the execution of the within deed from him as sheriff to Richard Relfe and Beverly Chew, which said acknowledgement was entered on the records of the court of that day.

Given under my hand and seal of office, at St. Louis, this twenty-seventh day of January, 1824.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

I do hereby certify the within instrument of writing to be duly recorded in my office, Book K, page 481 and following, this 27th day of January, 1824.

ARCHIBALD GAMBLE, *Clerk.*

107 Mr. JEWETT: We object to the copy because the original is in their power.

Objection overruled, and plaintiff at the time duly excepted to the ruling of the court.

Mr. HENDERSON: I next offer the power of attorney of Richard Relfe and Beverly Chew to John O'Fallon, pages 39 and 40, dated the 19th of October, 1838, and acknowledged the 25th of October, 1838, and recorded April 13th, 1840.

Power of Att'y from Relf & Chew to J. O'Fallon.

Know all men by these presents that we, Richard Relfe and Beverly Chew, of the city of New Orleans and State of Louisiana, have made, constituted, and appointed, and by these presents do make, constitute, and appoint, J. O'Fallon, Esquire, of St. Louis, State of Missouri, to be our true and lawful attorney, granting unto said attorney full power for us and each of us in our respective names and behalf, and to use, to sell, and in due form of law transfer and convey unto such persons or persons, for such price or prices and on such terms and conditions as our said attorney shall think fit, all or any part or parts of the lands and tenements unto us jointly belonging or possessed by us in the State of Missouri, and the price or prices or proceeds of such contemplated sales to receive, and in our respective names for the same to grant acquittance, and also, for the full execution of the purposes aforesaid, in our names to make, sign, seal, execute, and deliver all acts, deeds, and writings which shall or may be requisite in the premises, with such clauses, conditions, stipulations, warranties, and assurances as our said attorney shall think fit, and generally to do and perform all lawful acts and things whatsoever concerning the premises as fully in every respect as we, the said constituents, or either of us could do if we were personally present, and an attorney or attorneys under him, for the purposes

aforesaid, to make and at his pleasure to revoke, hereby ratifying and confirming all and whatsoever our said attorney
108 shall in our names lawfully do or cause to be done in the premises by virtue of these presents.

In witness whereof we have hereunto set our hands and affixed our respective seals, at New Orleans, on this nineteenth day of October, eighteen hundred and thirty-eight.

RICHARD RELFE. [SEAL.]
REV. CHEW. [SEAL.]

STATE OF LOUISIANA, *City of New Orleans,* } ss:

Be it remembered that on this twenty-fifth day of October, in the year eighteen hundred and thirty-eight, before the Honorable Alex. M. Buchanan, sole judge of the first judicial district court of the State of Louisiana, then actually sitting, being a court of record, personally came Richard Relfe and Beverly Chew, both personally known to said court to be of full age of majority and unmarried, and to be the persons whose names are subscribed to the foregoing instrument of writing, as having executed the same and severally acknowledged the same to be their act and deed for the purpose therein mentioned.

In testimony whereof I, John Lanson Lewis, the clerk of said court, have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this twenty-fifth day of October, in the year one thousand eight hundred and thirty-eight.

[SEAL.] JNO. L. LEWIS, *Clerk.*

Filed for record March 28th, 1840, and recorded April 13th, 1840.
JNO. RULAND, *Recorder.*

STATE OF MISSOURI, *City of St. Louis,* } ss:

I, the undersigned, recorder of deeds for said county, certify that the foregoing is a true copy of an instrument of writing exe-
109 cuted by Richard Relfe *et al.*, together with the acknowledgment and date of filing and recording thereof, as the same appear on record in my office in Book "L," page 281.

Witness my hand and official seal this 12th day of January, A. D. 1875.

D. W. MACADAM,
Recorder, St. Louis County, Mo.

Plaintiffs objects for want of title in Relfe & Chew. Court overruled objection, and pl'ffs duly excepted.,

I next offer a deed from Richard Relfe and Beverly Chew, by John O'Fallon, their attorney-in-fact, to Peter Lindell, dated March 20th, 1840, and recorded the same day, embracing the same land as described in the sheriff's deed. That deed is acknowledged and recorded on the 13th of April, 1840.

Deed.

Relf & Chew, by att'y,
to
P. Lindell.

Know all men by these presents, that we, Richard Relfe and Beverly Chew, both of the city of New Orleans and State of Louisiana in consideration of the sum of fifteen hundred dollars to us in hand paid by Peter Lindell, the receipt whereof we do hereby acknowledge, do by these presents grant, remise, release and forever quitclaim unto the said Peter Lindell, all our, and each of our right, title, interest and estate in and to a certain tract of land in St. Louis county, containing two hundred and forty acres, be the same more or less, and described in a deed from John K. Walker, then sheriff to said Relfe and Chew, bearing date November fourth, eighteen hundred and twenty-three, on record in said county in book "k" 481 p., as "bounded on the south by land of Gratiott & Philipson on the west by land of John P. Cabanne, and on the east by land of William Stokes and others and includes the big spring known by the name of Hammond's spring," and being part of a location of four hundred and eighty acres made by Rufus Easton as the legal representative of Hunot, and more particularly described by
110 reference to the certificates of John C. Brown, formerly sheriff of St. Louis county, recorded in Book "K." p. 397, together with all the privileges and appurtenances thereto belonging. To have and to hold the same unto him, the said Peter Lindell, and unto his heirs and assigns forever. And the said Relfe and Chew, for themselves and representatives hereby covenant and agree with the said Lindell, that they will forever warrant and defend the above granted premises against all persons claiming by, through or under them or either of them but not otherwise.

In testimony whereof we the said Richard Relfe and Beverly Chew have hereunto set our hands and affixed our seals this 20th day of March, eighteen hundred and forty.

RICHARD RELFE, [SEAL.]
By his attorney-in-fact, J. O'FALLON.
BEVERLY CHEW, [SEAL.]
By his attorney-in-fact, J. O'FALLON.

Signed, sealed and delivered in presence of—
P. D. TIFFANY.

STATE OF MISSOURI, } ss:
County of St. Louis, }

Be it remembered that on this twenty-seventh day of March, eighteen hundred and forty, before me, a justice of the peace in and for said county, appeared Richard Relfe and Beverly Chew, by John O'Fallon, their attorney-in-fact, who is personally known to me to be the person whose name is subscribed to the foregoing instrument of writing as the attorney-in-fact of the said Richard Relfe and Beverly Chew, and acknowledged the said instrument to be the act

and deed of the said Richard Relfe and Beverly Chew for the purposes therein mentioned. Taken and certified the day and year aforesaid.

J. W. WALSH, *Justice.*

111 STATE OF MISSOURI, } ss:
County of St. Louis, }

I, John Ruland, clerk of the circuit court and *ex officio* recorder for the county aforesaid, certify that the foregoing instrument of writing was filed for record in my office on the 28th day of March, 1840, and is truly recorded in Book L, No. 2, page 282.

[SEAL.] Given under my hand and seal of office this 13th day of April, A. D. 1840.

JN. RULAND, *Recorder.*

Pl'ffs objected for want of title in Relfe & Chew. Court overruled objections and pl'ff- duly excepted.

I next offer certain plats made by Mr. Cozens.

(Plats and maps & certificates attached to them need not be copied, but may be used in court.)

I next offer "the tracing of the plat of private surveys, 1276, 1659, 1660, 1661, 1662, 1663, 1664, 1813, 1814, 3340, and 1815, known as Cozens surveys in the Grand Prairie common fields in St. Louis, township 45, range 7 east, showing the interferences of said surveys with other claims, which is a true and exact exemplification of the original record in this office, authenticated by John Loughborough, surveyor general of Illinois and Missouri, as appears by his certificate dated the 26th of February, 1858." It contains tabular statements of surveys and parts of surveys shown on this diagram, covering all the claims that I have read and giving the date of confirmation. I desire to introduce this especially to show that the claim of 1814 of Baptiste de Reviere dit Bachinits' legal representatives was a confirmation under the act of June, 1812, as proven under the act of May, 1824, and also that Louis Lecroix was a confirma-
112 tion under the act of June 13th, 1812, and Vincent Bouis' legal representatives under the Pierre Chouteau, also under the act of 1812, and Pierre Barbauer under the act of June, 1812, and various other claims, and I desire to read the certificate of the surveyor general of Illinois and Missouri dated the 26th of January, 1858, in this connection, as follows:

Pl'ffs objected as incompetent & irrelevant, and the court overruled objections and pl'ff- duly excepted.

"The above plat of private surveys," etc.

(Plat need not be copied, but may be used in court.)

I will next offer the original of the Spanish concessions, showing remarks on surveys by Cozens and subsequent confirmations by the United States. These concessions are the original concessions, and I offer the one to Pierre Lacroix and the second one to Pierre Lecroix and the one of Corneau, Ant. Bacaunet, Giles Heurion, Guillcaume Bizet, Kiery Desnoyes (2), Veuve Hebert, Antoine Bacaunet

(2). These are the concessions of which these surveys were made and are certified copies from the original French:

Concession to Peirre Lacroix:

Du premier octobre mil sept cent soixante six sur la demande de Pierre Lacroix nous luy avons concedde et condedons a titre de propriette unc terre sise a la grande prairie contenante duex arpens de face sur quarante arpens de profondeur tenant a celi du Nomme Dube et de l'antre costé a celle du Nommé Jean Bions aux conditions de l'etablir concl'an et jour et qu'elle sera sujete aux Charges publiques et avons sinne'le dit jour et an.

ST. ANGE LABUXIERE.

Record Book F, page 150.

Pierre Lacroix:

Du premier octobre mil sept cent soixante six sur la demande de Pierre Lacroix nous luy avons concedé et concedons a titre
113 de proprieté un terrain Encedit porte St. Louis ten-ant par devant a une grande Bue par deriere au terr-ain du Nommé sans quartier d'un costé a celuy du Nommé Berger de l'antre costé an domaine du Boy a la charge de l'etablir sons l'an et jour et quel sera sujet aux Charges publiques.

ST. ANGE LABUXIERE.

Recorded Book F, page 150.

Concession to Corneau *Corneau:*

Du trante janvier mil sept cent soixante sept sur la demande de Francois Corneau Nour luy avons conceddé a titre de propriete un arpents et demy de terre a la grande prairie de front sur quarante arpens de profondeur faisant partie des trois arpens que Mr. De St. Ange S. Etait reservé et dont nous avons con-edé l'autre arpent et demy quireste au Nommé Bacanet tenant le dit arpent et demy d'un costé a Mr. LaClede et de l'autre costé au dt Baconnet a la charge par le dit Corneau de l'etablir sons l'anet jour et quil sera sujet aux Charges publiques et autres quil plaira a sa majesté d'y imposer et avons signé le dit jour et an.

ST. ANGE LABUXIERE.

Recorded Book F, page 150.

Concession to A. Bacanet:

Du dit jour sur la demande d' Antoine Bacannet habitant Nous luy avons conceddé a titre de proprieté un arpent et demy de terre face situé a la grande prerie de front sur quarante arpent de profondeur faisant partie des trois arpens que Mr. St. Ange s'etait reservé et dont il a ceddé l'autre arpent et demy au Nommé Corneau tenant le dit arpent et demy a celuy du dit Corneau et de l'autre costé a la terre concedde au sr Labuxiere a la charge par le dit Bacannet de l'establia sous l'an et jour et avons signé le dit jour et an.

ST. ANGE LABUXIERE.

114 Recorded Book F, page 150.

Concession to Giles Henrior :

Du trente avril mil sept cent souxante huit sur la demande de Giles Henrion habitant Nous luy avons conceddé une terre de deux arpens de face sur quarante arpents de profondeur sise au cul de sac de la grande prairie de St. Louis tenante d'un costé a la terre du Nommé Bidde et de l'autre costé a celle du Nommé Deschamp aux conditions detablir la dite terre sous l'an et jour et quelle sera sujette aux charges publiques et autres quil plaira a sa majesté d'y imposer et avons signe.

LABUXIERE.

Recorded Book F, page 154.

Concessions to Bizet:

Du dit jour sur la demande de Guilleaume Bizer habitant nous luy avons concedé et conceddons a titre de proprieté pour luy et ses hoirs on ayant cause une terre au cul de sac de la grande prerie contenante un arpent de large sur quarante arpens de profondeur tenante dun coste a la terre de Bacannet de l'autre costé a celle de Kiery Desnoyes aux conditions d'etablir la dit terre sous l'an et jour et quelle sera sujete aux charges publiques et autres qu il plaira a sa majeste d'y imposer donné a St. Louis le dit jour et an.

ST. ANGE LABUXIERE.

Recorded Book F, page 155.

Concession to Kiery Desnoyes :

Du dit jour sur la demande du dit Kiery Marchet and dit desnoyes habitant laboureur nous luy avons conceddés et conceddons a titre de proprieté pour luy ses heirs ou ayant cause une terre de deux arpens de large sur quarante arpens d'un costé a Louis Desnoyes et de l'antre costé a la terre du Nommé laroche ou
115 Bacannet aux conditions de mettre la dite terre eu valeur sous lan et jour fante de quoy reunie au domaine du Boy.

ST. ANGE LABUXIERE.

Recorded Book F, page 157.

Concession to Kiery Desnoyes:

Du dissept jui let mil sept cent soixante neuf sur la demande de Kiery Desnoyes Marchet and habitant laboureur a St. Louis nous lui avons conceddé et conceddons a titre de proprieté pour luy ses heirs on ayant cause une terre d'un arpent de large sur quarante arpens de profundeus situee an cul de sac de la grande prerie tenante d'un coste a Louis Marchet and et de l'antre coste au sr Bizet conditions de la mettre eu valeur sous l'anet jour fante de quoy sera reunie an domaine du Roy a St Louis led jour et au.

ST. ANGE LABUXIERE.

Recorded Book F, page 157.

Concession to Veuve Hebert :

Du huit juillet mil sept cent soixante neuf sur la demande de la

deme Veuve liu avons concedé et conceddons a titre de propriete pour elle ses hoirs on ayant cause une terre situee a la grande Pierie contenante trois arpens de face sur la profondeur ordinaire de quarante arpents tenant d'un costé a Guillaume Bisete et de l'autre cote au nomme Taillon aux conditions d'etablir la ditre terre sous l'an et jour et quelle sera sujete aux charges publiques et autres qu il plaira a sa majesté d'y imposes et avons signe le dit jour et an.

ST. ANGE LABUXIERE.

Recorded Book F, page 158.

116 Concession to A. Bacannet:

Du dix jan vier mil sept cent soixante dix sur la demande d'Antoine Bacannet habitant Nous luy avons conceddé a titre de proprieté un arpent de terre de large sur quarante arpents de profondeur situe a la grande prerie tenant a celle de Kiery Desnoyes et de l'autre costé a celle du Nommé Laroche aux conditions de l'etablir sous l'anet jour et avons signé le dit jour et an.

ST. ANGE LABUXIERE.

Recorded Book F, page 160.

Concession to Bacannet:

Du dit jour sur la demande du dit Bacannet habitant Nous luy avons concedé un arpent de terre a la grande prairie sur quarante arpens de profondeur tenant d'un costé a la terre de Rondeau et de l'autre coste a celle de Martigny aux conditions de l'etablir sous l'an et jour et avons signe le dit jour an.

ST. ANGE LABUXIERE.

Recorded Book F, page 160.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August* 7, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copies prepared from a book entitled "Livre Terrien No. 1," now in this office, are true and literal examplifications of the grant or concession to each of the following-named parties, viz: Pierre La Croix, Pierre La Croix, Francois Corneau, Antoine Bacannet, Giles Henrion, Guilleaume Bizet, Kiery Marchet and dit Desnoyes, Kiery Desnoyes Marchet, and Veuve Hebert, Antoine Bacannet, and Bacannet.

117 In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at
[SEAL.] the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

My purpose is to show that these claims were surveyed after that by Cozens, and that they called for concessions in the Grand Prairie common fields, and that they are recognized by the Government as being in the prairie common fields.

in whole or in part, as lines of the adjoining or interfering private surveys. This survey is herein platted and described to conform to those measurements.

(Here follows diagram marked p. 119.)

120 *Description.*

Beginning at a stone in the west boundary of section sixteen, in township forty-five north, of range seven east, corner to this survey and to survey numbered two thousand seven hundred and twelve, in the name of James Conway or legal representatives, from which a large stone marked with letter L. on the top, said — have been set for corner to the Conway survey, bears east, distant seventeen links; thence south, at forty-four links a stone thirteen inches long, ten inches wide, three inches thick, set with the edges north sixty-one degrees west and south sixty-one degrees east, at the intersection with the southern boundary of survey numbered three thousand three hundred and forty, in the name of Guillaume Bizet's legal representatives, from which a black oak seventeen inches in diameter bears north twenty-seven degrees and fifteen minutes west, distant twenty-eight links; and a black oak eight inches in diameter bears north fifty-eight degrees east, distant thirty-two and a half links; at four chains and seventy-five links a large stone, the northwest corner of this survey numbered nine hundred and three, in the name of Widow Camp's legal representatives, and a corner to fractional section sixteen, from which a black oak twenty-four inches in diameter bears north sixty-five degrees and thirty minutes east, distant eighty-four links, and a black oak twenty-three inches in diameter bears north one degree and five minutes west, distant seventy-nine and a half links; at twenty-seven chains and thirteen links a stone fourteen inches long, eleven inches wide, three and a half inches thick, the northeast corner of survey numbered one thousand eight hundred and fifteen, in the name of Peter Lacroix's representatives; at thirty-three chains and seventy-eight and one third links a stone; the southeast corner of the Peter Lacroix survey, thirty-seven chains and fifty-three and one-third links to a
121 stone in the northern boundary of survey numbered one thousand three hundred and thirty-two, in the name of Emiline Yosty, under John Baptiste Deschamps, the southwest corner of the Widow Camp survey and the southeast corner of this survey, from which the northeast corner of the Emiline Yosty survey, in the western boundary of survey numbered three hundred and sixty-three, in the name of Auguste Chouteau, under Laclede Legest, bears south seventy-five degrees east, distant seven chains; thence north seventy-five degrees west with the northern boundary of the Emiline Yosty survey eighty-one chains and eighty links to a stone in the east boundary of Charles Gratiot's survey, numbered two thousand and thirty-seven, the northwest — of the Emiline Yosty survey and a corner to this survey; thence north eight degrees and forty-five minutes east with the east boundary of the Charles Gratiot

survey two chains and forty-seven links to a stone marked with letters C. G., the northeast corner of the Charles Gratiot survey and a corner to this survey; thence north eighty-three degrees west with the north boundary of the Charles Gratiot survey thirteen chains and fifty-three links to a large stone, the southeast corner of survey numbered three thousand and fifty-two, in the name of Charles Roy or his legal representatives, and a corner to this survey; thence north seven degrees east with the east boundary of the Charles Roy survey, at twenty-seven chains and ninety-three and two-thirds links a stone fourteen inches long, eight and a half inches wide, three inches thick, corner to the Peter Lacroix survey; at thirty chains and ninety-seven links a stone, corner of the Peter Lacroix survey, seventy-six chains and forty-seven links to a large stone, the southwest corner of survey numbered two thousand six hundred and twenty, in the name of Francis Delisle or legal representatives, and the northwest corner of this survey; thence south eighty-
122 three degrees east with the south boundary of the Francis Delisle survey forty-one chains and thirty-eight links to a large stone marked L. corner to this survey and to survey numbered two thousand six hundred and ninety-two, in the name of Joseph Genereux or legal representatives; thence south, at nine chains and three links a stone ten inches long, nine inches wide, three inches thick, at the intersection with the western boundary of survey numbered one thousand six hundred and sixty-three, in the name of Pierre Barribeau, from which the southwest corner of the Pierre Barribeau survey bears south twenty-eight degrees and forty-five minutes west, distant three chains and ninety-one and a half links; at thirteen chains and fifty-two links a stone nine inches long, six inches wide, four inches thick, at the intersection with the south boundary of the Pierre Barribeau survey, which is the north boundary of Louis Lacroix's survey, numbered one thousand six hundred and sixty-four, from which the southwest corner of the Pierre Barribeau survey bears north sixty-one degrees west, distant two chains and twelve links; at sixteen chains and thirty links a stone marked with letter L. on the top, the southwest corner of the Joseph Genereux survey and the northwest corner of the James Conway survey; at sixteen chains and eighty-seven links a stone twenty and a half inches long, six inches wide, three and a half inches thick, at the intersection with the south boundary of the Louis Lacroix survey, which is also the north boundary of survey numbered one thousand six hundred and sixty-five, in the name of Louis Laroche's legal representatives, from which the southwest corner of the Louis Lacroix survey bears north sixty-one degrees west, distant three chains and eighty-one links; at twenty-three chains and fifty-six links a stone fourteen and a half inches long, six and a half inches wide, six inches thick, at the intersection with the south boundary of the Louis Laroche survey, which is also the north
123 boundary of survey numbered one thousand eight hundred and thirteen, in the name of Vincent Bouis' legal representatives, under Pierre Chouteau, from which the southwest corner of the Louis Laroche survey bears north sixty-one degrees west, distant

seven chains and nineteen links; at twenty-six chains and ninety-one links a stone ten inches long, nine inches wide, four inches thick, at the intersection with the north boundary of survey numbered one thousand eight hundred and fourteen, in the name of Baptiste Riviere dit Baccane or legal representatives, from which the northwest corner of the Baptiste Riviere survey bears north sixty-one degrees west, distant thirty-five chains and seventy-six links; at thirty chains and twenty-five links a stone fourteen inches long, ten and a half inches wide, three and a half inches thick, at the intersection with the south boundary of the Vincent Bouis and the Baptiste Riviere survey-, which is also the north boundary of survey numbered three thousand three hundred and forty, in the name of Guillaume Bizet's legal representatives, from which the southwest corner of the Vincent Bouis and the Baptiste Riviere surveys bears north sixty-one degrees west, distant thirty-seven chains and forty-five links; at thirty-three chains and fifty-nine links a stone eleven and a half inches long, eight and half inches wide, four inches thick, at the intersection with the south boundary of the Guillaume Bizet survey, from which the southwest corner of said survey bears north sixty-one degrees west, distant thirty-nine chains and fourteen links, fifty-six chains and thirty links to a stone, the southwest corner of the James Conway survey and a corner to this survey; thence east with the south boundary of the James Conway survey, at forty chains and forty-four links a stone fourteen inches long, eight and a half inches wide, two inches thick, set with the edges east and west, at the intersection with the south boundary of the Guillaume Bizet survey, from
124 which a black oak twelve inches in diameter bears north seventy-two degrees and forty-five minutes west, distant eleven links, forty-one chains and twenty-five links to the beginning corner.

Statement of Interferences of Survey No. 2500 with Other Surveys.

1. Survey No. 1663, of one and a half by forty arpents, claimed by Pierre Barribeau, confirmed by the act of Congress of the 13th June, 1812, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri," the extent and boundaries proven on the 3rd March, 1825, in conformity with the provisions of the act of Congress of the 26th May, 1824, entitled "An act supplementary to an act passed on the thirteenth day of June, one thousand eight hundred and twelve, entitled An act making further provisions for settling the claims to land in the Territory of Missouri." The area of the interfering part, 0.41 acre.

2. Survey No. 1664, of one by forty arpents, claimed by Louis Lacroix, confirmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on the 3rd March, 1825, conformably to the provisions of the act of Congress of the 26th May, 1824. The area of the interfering part, 0.86 acre.

3. Survey No. 1665, of two by forty arpents, in the name of Louis Laroche's legal representatives, confirmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on the 28th

July, 1825, in conformity with the provisions of the act of Congress of the 26th May, 1824. The area of the interfering part, 3.20 acres.

4. Survey No. 1813, of two by forty arpents, in the name of Vincent Bouis' legal representatives under Pierre Chouteau, con-
125 firmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on the 1st June, 1825, in conformity with the provisions of the act of Congress of the 26th May, 1824. The area of the interfering part, exclusive of the part included in survey No. 1814, 10.18 acres.

5. Survey No. 1814, of one by forty arpens, in the name of Baptiste Riviere dit Baccane or legal representatives, confirmed by the act of Congress of the 13th June, 1812, the extent and boundaries proven on the 28th July, 1825, conformably to the provisions of the act of Congress of the 26th May, 1824; confirmed also by the act of Congress of the 29th of April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in that Territory of Missouri." The area of the interfering part, 10.67 acres.

6. Survey No. 3340, of one by forty arpens, in the name of Guillaume Bizet's legal representatives, confirmed by the act of Congress of the 4th July, 1836, entitled "An act confirming claims to land in the State of Missouri, and for other purposes." The area of the two interfering parts, 11.18 acres.

7. Survey No. 1815, of two by forty arpens, in the name of Peter Lacroix's representatives, confirmed by the act of Congress of the 29th April, 1816. This tract is wholly included in survey No. 2500 and contains 58.70 acres.

All the above surveys are lots in the Grand Prairie common field of Saint Louis. They were surveyed in the years 1850 and 1855 by William H. Cozens, deputy surveyor, under instructions dated the 9th of May, 1846, and the 22nd February, 1855.

126 Office of the surveyor general for Illinois and Missouri.

SAINT LOUIS, *January* 22, 1859.

The foregoing plat and description of survey No. 2500 are correctly copied from the approved plat and description of said survey recorded on pages 260, 261, 262, 263, 264 of Record Book A on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

There is therefore granted by the United States unto the said Joseph Hunot or his legal representatives and to his or their heirs the tract of land as described in the aforesaid survey number two thousand five hundred, hereby expressly excepting and excluding from the transfer by these presents such valid rights as may exist in virtue of the claims particularly designated under the 1st, 2d, 3d, 4th, 5th, 6th, & 7th in the foregoing, and further saving and excepting from the transfer by these presents of any other valid adverse claims which may exist to any part of the land embraced in the aforesaid

survey number two thousand five hundred; to have and to hold the said tract of land according to said survey number two thousand five hundred unto the said Joseph Hunot or his legal representatives and to his or their heirs and assigns forever, with the exceptions, reservations, and exclusions as aforesaid.

In testimony whereof I, James Buchanan, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the thir-
127 teenth day of August, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the
[L. S.] United States the eighty-fourth.

By the President:

JAMES BUCHANAN,
By J. A. B. LEONARD, *Sec'y.*

I. N. GRANGER,
Recorder of the General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 18, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a patent dated August 30, 1859, for survey No. 2500, issued in favor of Joseph Hunot, is a true and literal exemplification of the original patent as the same appears of record in this office in vol 11, "Record of Donation Patents," on pages 405 to 413, inclusive, and immediately preceding a patent to "Elliot McCulloch" "and to his heirs," recorded in said volume eleven on pages 414 and 415.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

I now offer a map made by Mosberger of township 45, range 7 east, covering the Grande Prairie common field.

Pl'ffs objected as being altered by def'ts. Court overruled
128 objections and admitted the same. Pl'ffs duly excepted. (Need not copy may be read.)

This contains the tracing according to the corrected tracing of Cozens. That is the only difference between the original map and this.

I now offer a decision of the Commissioner of the General Land Office on William H. Cozens' surveys of the Grande Prairie common field, dated November 27th, 1856, and the letter of said Commissioner, dated January 14th, 1857, transmitting the papers to the Secretary of the Interior on appeal and the decision of said Secretary thereon confirming said survey. I submit the papers and certificates, and propose to use such parts as we choose:

DEPARTMENT OF THE INTERIOR, *March 2nd*, 1857.

SIR: I herewith return the papers which accompanied your communication of the 14th January last on the appeal of Willis L. Williams, Esq., from the decision of your office in relation to what are known as "Cozens' surveys" in the State of Missouri.

Your action on the matter is affirmed.

Respectfully your ob't serv't,

C. McCLELLAND, *Secretary.*

To Hon. Thos. A. Hendricks, Commissioner of the General Land Office.

Letter of Comm'r of Gen'l Land Office to Sec'y Int., Jan. 14, '57.

GENERAL LAND OFFICE, *January* 14, 1857.

Honbl. Rob't McClelland, Secretary of the Interior.

129 SIR: Herewith I have the honor to lay before you the papers, according to the schedule herewith, in the case of what are known as the "Cozens' surveys," with a copy, A, of the decision of this office, dated November 27, 1856, as communicated in a letter of same date to the surveyor-general at St. Louis, Missouri. These papers are respectfully submitted on the appeal (B), dated the 7th inst., of Willis L. Williams from the decision of this office in the matter.

With great respect, your ob't servant,

THOS. A. HENDRICKS,
Commissioner.

Schedule of Papers in the Case of Cozens' Surveys Sent to Secretary Interior January 14, 1857.

1. Report of Sur. Gen'l Clark, dated August 19, 1852, in relation to Cozens' surveys.
2. Schedule of the papers accompanying said report.
3. Marked on schedule of sur. gen'l, A—Instructions of 9th May, 1846, issued by Sur. Gen'l Conway to Wm. H. Cozens, dept. sur., &c.
4. " " " B—Instructions dated May 9, 1846, from same to same.
5. " " " C—Copy of notice given 9th May, 1846, through the public prints of instructions mentioned above.
6. " " " D—Plat of survey made by Cozens under instructions aforesaid.

7. Marked on schedule of sur. gen'l, E—Copy of document which Mr. Cozens ret'd, with his field-notes, &c., on 28 Dec., 1850.

130

8. Marked on schedule of sur. gen'l, F—Copy of depositions taken by Mr. Cozens relative to lots in Grande Prairie common field, &c.
9. " " " G—Copy of deposition of Antoines Smith, &c.
10. " " " H—Copy of the examination as to the locality of the lots within the range of Mr. Cozens' instructions.
11. " " " H & I—Same as above.
12. " " " K—Certified transcript by the clerk of the supreme court of the State of Missouri, &c.
13. " " " L—Certified transcript by clerk of the supreme court of Missouri, &c.
14. " " " M—Copy of letter, dated Feb'y 17, 1851, from Edw'd Bates to Sur. Gen. Clark, St. Louis, Mo.
15. Letter dated St. Louis, Mo., Oct. 17, 1852, from C. C. McClure, Comm'r Gen'l Land Office.
16. Letter dated Oct. 25, 1852, from John Hogan to Comm'r Gen'l Land Office.
17. Letter dated St. Louis, June 22nd, 1853, from Willis L. Williams to Comm'r Gen'l Land Office.
18. Letter dated St. Louis, June 22nd, 1853, from sur. gen'l to Comm'r Gen'l Land Office.
19. Letter dated St. Louis, July 23rd, 1853, from Willis L. Williams to Comm'r Gen'l Land Office.
20. Letter dated St. Louis, August 1st, 1853, from same to same.

131

21. Report of sur. gen'l, January 30th, 1855, on Cozens' surveys.
22. Schedule of papers accompanying sur. gen'l report of Jan'y 30, 1855.
23. Marked on schedule of sur. gen'l as No. 1—Copy of public notice of 14 Sept., 1853.
24. " " " " 2—Argument of Willis L. Williams of 15th July, 1853, against Cozens' surveys.

25. Marked on schedule of sur. gen'l as No. 3 & 4—Argument of Messrs. Barton and Bates & R. M. Field.

26. " " " " 5—Argument of John Hogan in favor of location of lot No. 6 for Conde.

27. " " " " 6—Argument of P. J. Hurck in favor of location of lot No. 8 for Benito Vasquez.

28. " " " " 7—Argument of P. J. Hurck in favor of location of lot No. 7 for Faustin dit Parent.

29. " " " " 8—Argument of Thomas C. Reynolds in favor of location of lot No. 8 for Benito Vasquez.

30. " " " " 9—Argument of C. C. McClure in favor of location of lot No. 9 for Pierre Bambeau.

132

31. Marked on schedule of sur. gen'l as No. 10—Application of David Diseslets for the survey of Vincent Bouis' lot, with Exhibits A, B, C, & D.

32. " " " " 11—Statement of Louis Chancelier's survey No. 1561, with Document A, &c.

33. " " " " 12—Statement of Jos. Calve's survey No. 1583, with Document A.

34. " " " " 13—Statement of survey No. 3285 for Thos. Demegand, with Document A.

35. " " " " 14—Statement of lot No. 1 of Cozens' location for Conde's reps., with Document A.

36. Marked on schedule of sur. gen'l as No. 15—Statement of lot No. 4, Frs. Mareschal.
37. " " " " 16—Statement of lot No. 26, A. Conde.
38. " " " " 17—Statement of lot No. 7, F. Faustin.
39. " " " " 18—Statement of lot No. 8, B. Vasquez.
40. " " " " 19—Statement of lot No. 9, L. Lacroix.
41. " " " " 20—Statement of lot No. 10, L. Lacroix.
42. " " " " 21—Statement of lot No. 11, L. Laroche.

133

43. Marked on schedule of sur. gen. as No. 22—Statement of the unsurveyed lot confirmed to Vincent Bouis.
44. " " " " 23—Statement of lot No. 13, P. Riviere dit Baccané.
45. " " " " 24—Statement of lot No. 14, for G. Bizet, with document A.
46. " " " " 25—Statement of lot No. 20, Pierre Lacroix.
47. " " " " 26—Statement of lot No. 22, Jas. Laurie dit Larochelle.
48. " " " " 27—Resume of the data bearing on the locations of surveys Nos. 15, 61, 1583, 3285, & lot No. 1 of Cozens' surveys.
49. " " " " 28—Resume of the data bearing on the locations of lots Nos. 4, 6, 7, 8, 9, 10, 11, 13, & 14 & unsurveyed lot confirmed to Vincent Bouis' rep's.
50. Argument of Willis L. Williams, of 22nd June, 1853, with diagram.
51. Letter from sur. gen'l, St. Louis, Mo., dated Feb'y 21, 1855, to Com'r Gen'l Land Office.
52. Letter from R. M. Field, B. Bates, & Willis L. Williams, St. Louis, Mo., Feb'y 20th, 1855, to Com'r Gen'l Land Office.

53. Letter from A. H. Lawrence, May 21, 1855, to Com'r Gen'l Land Office.
54. Letter from Willis L. Williams, June 26, 1855, to Com'r
134 Gen'l Land Office.
55. Letter from A. H. Laurence, August 10, 1855, to Com'r Gen'l Land Office.
56. Letter from Willis L. Williams to Com'r Gen'l Land Office, Aug. 13, 1855, rel. to an appeal respecting the location of certain fields in the Grand prairie.
57. Letter from A. H. Evans, of August 23rd, 1856, with argument, &c.
58. An argument of C. C. McClure, dated Sept. 10, 1855, in ref. to the approval of Cozens' surveys.
59. Argument of John Wilson in the case of the claim of Benito Vasquez in the Grand prairie.

Decision of Comm'r of Gen'l Land Office on Cozens' Survey, Nov. 27, '56.

GENERAL LAND OFFICE, *November 27th*, 1856.

John Loughborough, Esq., surveyor general, St. Louis, Missouri.

SIR: Your report of the 30th January, 1855, on the Cozens surveys of the Grande prairie and Cul-de-Sac common fields of St. Louis, together with all the accompanying papers and sundry arguments *pro* and *con.* since received, have been before this office. After a careful examination of the whole subject, and in view of the numerous interests which have grown up under these surveys made so many years ago, and to a certain extent acquiesced in, it has been determined as between the United States and the parties to adopt the recommendation made in your report not to disturb them for valid claims, with the single exception of your proposed change of the western boundary so as to straighten it from the southwest corner of survey No. 3285 and a correspondnig change in the eastern boundary, which is not deemed proper or advisable.

135 For as to the objection raised to the offsets in the outboundaries they are not deemed material, such offsets being a common occurence in similar surveys, in proof of which the east and west boundaries of the Grande prairie, St. Louis common field, and Little Prairie common fields, on the east boundaries of Cul-de-Sac and Prairie des Noyer, are referred to.

In fact, in those early times, when the lands were comparatively of little value, there seems to have been no such particularity of description as would enable any deputy to make a survey that would completely satisfy all the parties in interest. Therefore, when the deputy surveyor, who is supposed to have access to the best information on the spot, acting under his oath of office and his instructions, shall have done the best in his power, his action should not be disturbed except for most cogent reasons or where plain neglect of duty can be clearly shown, which, with all the lights now before us, is not perceived to be the case in the present instance. Besides, the original claimants and their successors do not appear to be

among the complain-ts, but only interested parties outside of their limits.

You will therefore carry out the suggestions in your report, with the single exception referred to, and return the surveys accordingly,* accompanied by a tabular statement referring to the act of confirmation in the case of each claim, and excepting, of course, those unconfirmed claims where localities would carry their limits within the common field. Before this final proceeding you will first, however, notify all parties concerned of the purport of the foregoing.

I am, very respectfully, your ob't servant,

THOS. A. HENDRICKS,
Commissioner.

136 *Saving in the certificate of approval which may ultimately be appended to the return of surveys any valid interfering rights, if such exist.

Office of the Surveyor General for Illinois and Missouri.

ST. LOUIS, 19*th August*, 1852.

SIR: As promised in my report of the 19th June last, upon the application made for the resurvey of the 1,600 arpents confirmed by the board of commissioners to Jean F. Perry under Angelica Chauvin, I have the honor to submit the following report on the surveys of individual lots in the southern part of the Grande Prairie common field of St. Louis, made by Wm. H. Cozens under instructions from this office issued by my predecessor on the 9th May, 1846, and returned on the 28th December, 1850, and 24 and 26 March, 1851:

The documents accompanying this report are detailed in a schedule, in which they are lettered from A to M, inclusive, and are twelve in number.

The lots surveyed by W. H. Cozens are those on the diagram D, numbered from 1 (Louis Lemonde) to 22 (Joseph Sorin dit Larochelle). The nature of those twenty-two lots as to grants and confirmations, or the absence of both, is briefly set down on that diagram, but their present situation is stated at large in the examination lettered H.

Had the confirmed lots been surveyed in a continuous body of vacant land, and their locations plainly ascertained, so as to leave no doubt as to the identity of their lines with the calls of the ancient grants, the entries under the act of 26th May, 1824, and the special act of 2nd July, 1836, for Larochelle, I would at once have approved the surveys, but inasmuch as there are some discrepancies
137 between the present locations and the records which control the action of this office, and the said locations interefere to their full extent with surveys of New Madrid certificates, with lands assigned by law to the public schools of t'p 45 N., R. 7 E., and also would conflict with surveys (No. 903, for Widow Camp, and No. 363, for Auguste Chouteau), if Mr. Cozzens had strictly followed his instructions, and, moreover, from the fact that the surveys of said confirmed lots do not lie contiguous in succession, but are separated by intervening unconfirmed lots, I have felt it my duty to report the

whole matter to you, with my opinion thereon, and to ask your decision and instructions in view of its final disposal by this office, so far as such disposition can at present be made.

The subject presents the question of right between the owner of the claims surveyed by Mr. Cozens and those of the lands upon which they have been placed, and the question of the locality of the lots thus surveyed. The solution of the former belongs to the judicial tribunals of the country, and for this reason I have confined myself in this report to examinations and researches upon the location of said lots, which is the proper province of this office. I will then proceed with the investigation by first taking into consideration the lots in the Grande Prairie common field, and, secondly, those of the Cul-de-Sac.

1st. A. Grande Prairie common field.

The facts and data relative to the Grande Prairie lots being detailed at large in the examination marked H and its resume I, I will only now enter into a brief analysis of the latter, as follows:

138 Lot No. 1. Confirmed. Examination, p. 7. Resume, p. 1.	Lemonde under Conde. This was the southern arpent of the Conde grant for two arpents. It was bounded south by Deshetres.
Lot No. 2. Unconfirmed. Examination, p. 10. Resume, p. 1.	Bequette is not the south boundary of Conde, but the north boundary of Francis Marechal. Quantity not ascertained.
Lot No. 3. Unconfirmed. Examination, p. 11. Resume, p. 1.	Deshetres is the south boundary of Conde, and also the south boundary of Francis Marechal, yet the surveys hold neither of those positions. Quantity not ascertained.
Lot No. 4. Confirmed. Examination, p. 12. Resume, p. 2.	Francois Marechal is bounded north by Bequette and south by Deshetres. Instead of being located between them it lies south of Deshetres.
Lot No. 5. Unconfirmed. Examination, p. 13. Resume, p. 2.	Francois Moreau is the north boundary of the two-arpent lot confirmed to Auguste Conde by the acts of 1812 and 1824 (sec. lot No. 6.) Quantity not ascertained.
Lot No. 6. Confirmed. Examination, p. 14. Resume, p. 2.	Auguste Conde's representatives. The lot appears to be properly located.
Lot. No. 7. Confirmed. Examination, p. 15. Resume, p. 2.	Francois Faustin has by the record Conde for its northern and Laroche for the southern boundary. It is properly located with the Conde boundary, although Laroche is surveyed 3½ arpens lower down.

139 Lot No. 8. Confirmed. Examination, p. 17. Resume, p. 2.	Benito Vasquez has no precise boundaries of itself, but Pierie Barribeau calls for it as his northern line, which position Mr. Cozens has given to Vasquez, although Vasquez occupies part of Laroche's place according to Faustin's call.
Lot No. 9. Confirmed. Examination, p. 18. Resume, p. 2.	Pierre Barribeau; north by Vasquez and south by the lot of Louis or Joseph Lacroix. Supposing that the Vasquez lot is located where it was possessed at the time of the confirmation, the lot of Barribeau appears to be properly located.
Lot No. 10. Confirmed. Examination, p. 19. Resume, p. 2.	Louis or Joseph Lacroix. The record gives Barribeau for the north boundary and one Lagrandeur or Guitard for the southern call. If Barribeau's lot is at the proper place, this lot of Lacroix is likewise properly located.
Lot No. 11. Confirmed. Examination, p. 20. Resume, p. 2.	Louis Laroche; north by Parent and south by Rondeau; also the south boundary in Parent's entry. Mr. Cozens' location of this Laroche lot is 3½ arpens south of Parent's lot, but is bounded south by Rondeau.
Lot No. 12. Unconfirmed. Examination, p. 22. Resume, p. 2.	Rondeau is properly located between Laroche and Baccane, but it has determined Laroche's location. Quantity not ascertained.
Lot No. 13. Confirmed. Examination, p. 22. Resume, p. 2.	Baptiste Riviere. Both confirmations in this case for Rondeau and Corneau, but—
140 Lot No. 14. Confirmed. Examination, p. 25. Resume, p. 3.	Bizet is bounded by Baccanet & Desnoyers dit Marchetau in the record.
Lot No. 15. Unconfirmed. Examination, p. 31. Resume, p. 4.	Francois Corneau dit Martigny; is the south boundary of Baccane, No. 13, by the record. Quantity, 1 arpent; Baptiste Riviere's testimony, page 28, ins.
Lot No. 16. Unconfirmed. Examination, p. 31. Resume, p. 4.	Pierre Berger; bounded north by Corneau and is 3 arpents wide. See Baptiste's Riviere's testimony, page 28, ex. This lot was surveyed by Cozens as two arpens only.
Lot No. 17. Unconfirmed. Examination, p. 32. Resume, p. 4.	John B. Petit. No boundaries. Quantity not ascertained.

Lot. No. 18. Unconfirmed. Examination, p. 32. Resume, page 4. — Francois Liberge, alias Thiebeault. No boundaries. The quantity is according to deed of 1779. See No. 19, page 15 of history.

Lot No. 19. Unconfirmed. Examination, p. 33. Resume, p. 4. — Charles Henrion. See concession to Giles Henrion and deed in 1779 by C. Henrion for two by forty arpents. Bounded by Thibeault dit Liberge and Lacroix. See also No. 20, which is bounded on one side by Jean Rion. The quantity is according to deed of 1779.

Lot No. 20. Confirmed. Examination, p. 34. Resume, p. 5. — Pierre Lacroix. Bounded by Dube & Jean Rion. This lot appears to be properly located.

141 Lot No. 21. Unconfirmed. Examination, p. 34. Resume, p. 5. — Joseph Dube, limited on one side by Lacroix. The quantity is according to a sale in 1769.

Mr. Cozens divided his surveys into tracts as follows:

1st. A northern tract embracing lot- Nos. 1 to 11, inclusive, the eastern line of which is a southward prolongation of the eastern line of former surveys Nos. 1296, 1461, 3303, 3304, 1561, 1583,
Plat D. & 3285 on their north. These surveys of Cozens run exactly 40 arpens to the west, making a small eastern offset from the western line of the said former surveys, on account of the excess of their side lines over 40 arpents. This offset has, however, been done away with in lot No. 1 (Conde), which has been disposed of by this office.

2nd. A southern tract embracing lots Nos. 12 to 22, inclusive, the eastern line of which is no longer a continuation of that
Plat D. of the first tract, but from No. 13 to the southward is closed on the line of survey No. 903 for Widow Camp, and the western boundary projects westwardly from the western boundary of the lot to their north some twenty-seven chains into survey No. 2500 for Hunot under New Madrid certificate No. 161, making, however, the said lots all less than 40 arpents in depth.

This offset to the west from the Rondeau lot No. 12 southward, made by Mr. Cozens with the apparent purpose of guarding the camp tract from the intrusion of his surveys, was not authorized by his instructions and the papers furnished him therewith. Among those papers was the entry of the claim of Baccane (lot No. 13), as confirmed by Mr. Hunt, which is transcribed at page 23 of the examination H, to wit:

142 "Baptiste Riviere dit Baccane's legal representatives claim a field lot in the Big prairie, near St. Louis, containing one arpent in front by about 40 in depth, bounded on the east by vacant lands in a line with the eastern boundary line of the Grand prairie, north by the lot formerly owned by Rondeau, west by vacant land

in a line with the western boundary of the Big prairie field, and south by the field lot formerly owned by Corno."

This description of the east and west lines of Baccane's lot could not be misunderstood, and should have governed Mr. Cozens, not only in the location for Baccane, but also in the location of all the lots south of it, for there is nothing in the concessions of the two confirmed lots in that direction, viz, No. 14 (Bizet) and No. 20 (Lacroix), to authorize their extension east or west of other surveys to the northward, and still less could such a departure from the record be permitted in the cases of the intervening surveys of unconfirmed claims made for the sole purpose of connecting together those that had been confirmed. If Mr. Cozens was unwilling to run his surveys into the camp tract on the east, he could not, with any more propriety, compensate for the deficiency at the west and there complete the length of 40 arpents by a like encroachment upon the land of Hunot's survey (No. 2500). If it were improper on the east it was equally so on the west of the tract under consideration.

As to the general position of the lots of the Grand prairie embraced in Cozen's instructions and as regards their east and west lines, I beg leave to refer to the following data:

1st. To my report of the 4th November, 1851, upon the offset in the surveys of the Grand prairie made in 1838 by Joseph C. Brown between the lot of Alexis Picard, survey No. 1253, and that of Joseph Mainville, survey No. 1296, by which that deputy extended this latter survey eastward 9 arpents 36 feet beyond the former,
143 leaving the same distance between the western lines of the two surveys. In that report, made after a careful investigation of all the facts bearing on the subject which were within my reach, I advanced the opinion that the offset between Picard and Mainville was made in accordance with their concession and their subsequent confirmations, and the report also showed that the survey of the exterior lines of the Grande Prairie common field, executed by Jos. C. Brown in March, 1818, under his contract of the 31st March, 1817, had subsequently been set aside at this office; that the said Brown contracted anew for the same survey on the 15th September, 1835, and that under this latter contract he located the lots of the Grande prairie southwardly as far as including the lot of Kiercereau, designated as survey No. 3304.

2nd. To the decision of the supreme court of Missouri at the October term, 1847, in the case of Page *vs.* Scheibel, in vol. X of Missouri reports. This was a writ of error to St. Louis circuit court in an action of ejectment brought by D. D. Page, the owner of the New Madrid Coontz location survey No. 2499, against Scheibel, who held the interfering lot of Calve in the Grande pra-rie, designated as survey No. 1583.

Relative to the southern offset of the Grande prairie the court remarked as follows, to wit:

"Extracts were read from Livre Terrien No. 2, containing surveys made by Martin Duralde in 1770, 1771, & 1772 in the Grande prairie. This document is signed by the lieutenant governor and many of the inhabitants to authenticate the concession which had

been made verbally or in writing. One of these surveys (that of the lot of Picard) explained the manner in which the offset of nine arpents to the east occurred."

In the same decision the testimony of Joseph C. Brown was also introduced, from which I will extract the following, viz:

144 "The plaintiff examined Joseph C. Brown, who stated that he surveyed t'p 45, range 7, in 1817–'18, and ran the out boundary of the Grande prairie field lots. Witness stated that there was in the surveyor general's office an unofficial map made by Soulard for his own use purporting to be a map of the surveys in the Grande prairie, which was believed to be correct. The southernmost lot laid down on this map was that of Kiercereau, being the lot designated as survey No. 3304. This lot of Kiercereau was the fourth lot south of the one first extending eastwardly 9 arpents further than the lots north of them, and, making the offset heretofore spoken of by this map, Brown was governed in his survey of the Grande Prairie common fields. He surveyed the land south of Kiercereau into sections as public land. In running the eastern out boundary line in 1818 he made the eastern line of Kiercereau's lot and of three lots north of it an extension of the eastern line of the northern block of lots; but in 1835, when he was employed to make a survey of the common field lots in the Grande prairie, it was discovered that Kiercereau's lot and three others north of it extended further east, and he was directed to survey them accordingly."

(See in my report on the Grande prairie offset, Document G, which is a copy of the original plat by Soulard referred to in Mr. Brown's testimony. The supposition expressed in the report that Brown used the plat in 1818, when he ran the exterior lines of the "Grande prairie," is thus confirmed by his evidence.)

In the case alluded to the verdict of the inferior court was rendered in favor of Scheibel, the owner of the Calve field lot, against Page, holding the New Madrid tract. The decision of the supreme court on Page's appeal, from which the foregoing abstracts are taken,

145 appears to affirm the said verdict, though it would seem to be somewhat deficient in clearness in stating that fact, as there is no positive opinion upon the former judgment. One point, however, is plain, that the higher tribunal considered the question at issue as a question of locality, and that its solution belonged to the jury; but what was then left open for further judicial action on the question of the locality of the lots south of Picard in the eastern offset of the Grande prairie has been recently decided by the decree of the same supreme court of Missouri at the March term, 1852, in the case of James Harrison, appellee, *vs.* Francis W. Page, appellant: A certified copy of the decree referred to accompanies this report and is lettered K.

The paper L is a certified transcript of the instructions given of its own motion by the court of common pleas of St. Louis county to the jury in the above case of Harrison *vs.* Page. It thus describes the case, viz:

"This was an action of ejectment brought by James Harrison in

the St. Louis common pleas against Francis W. Page for two by forty arpens of land lying in the Grande Prairie about three miles from St. Louis. It was tried in 1850 and resulted in a verdict and judgment for the plaintiff for some two or three acres of the easternmost end of said tract."

The object of controversy was the eastern end of 2 by 40 arpents confirmed by the act of 1816 to the legal representatives of Louis Chancelier and surveyed for them as No. 1561, situated in the Grande prairie. It is one of the lots of the offset and adjoins Calve's to the north. See plat D. Harrison held title to the premises from Chancelier and under it sued Page, the owner of the Coontz New Madrid tract. The contention was for land entirely included in the offset, and the question at issue was whether or not the offset in surveys Nos. 1296, 1461, 3303, & 3304 had been made by the United States so as to conform to the surveys made of the same lots by au-
146 thority of the Spanish Government. The jury rendered their verdict in the affirmative, and it was also decided that survey No. 1561 for Chancelier's representatives, lying south of and adjoining survey No. 3304, was therefore correctly located. Without entering into further details on this important subject I beg leave to recommend to you a careful perusal of the decision in the case of Scheibel and Page, and also of the decree in that of Harrison and Page, which latter fully clears up what seemed to have remained doubtful in the first case, and it is believed definitely settles the offset question.

In my report of the 4th November, 1851, I respectfully asked that the decision of your office might be communicated with as little delay as possible in order to enable me properly to report on Mr. Cozens' surveys, on the locality of which the settlement of this question has a most important bearing. The decision has not yet been received, but, believing that you will sustain the conclusions arrived at from the examination of all the facts connected with the subject, and which conclusions, I believe, have been sanctioned by two decrees of the supreme court of this State in the cases before mentioned which are thought to set the matter at rest—

I have deemed it proper to act upon the supposition by assuming the fact that the lots in the Grande prairie south of that of Picard (survey No. 1253) and commencing with the Mainville lot, survey No. 1296, are located correctly in what concerns their common east and west boundaries and according to their confirmations, based either on the ancient French and Spanish concessions (where such were granted) or the possession, cultivation, and inhabitation of the lots which were made by the laws of Congress, the evidence of title, or, in other words, that the southern offset made eastwardly in 1838 by Joseph C. Brown placed the tracts south of Picard in their
147 proper position, his old survey in 1818 of the exterior lines of the Grande prairie to the contrary notwithstanding.

I have in the accompanying document lettered I, as also in a former part of this communication, pointed out the several discrepancies between the records and Mr. Cozens' locations in the Grande Prairie field, which differences may be a bar to their approval if

precise, contiguous, and concordant limits are required; but, on the other hand, it may be said in favor of his locations that no confirmed claims seem to have been omitted among them for which they might be called to give place; that the discrepancies in the cases of Moreau, Deshetres, and Bequette (lots Nos. 2, 3, and 5, on plat D) appear to be acquiesced in by the owners of the adjoining lands; that the lot surveyed for Laroche as two arpents in width is conformable to the entry in Mr. Hunt's minutes and the claimant's possession; that one of the confirmations (in the northern block of the surveys), Lemonde under Convey, was made in 1811; another, to Vasquez, in 1816, and the others in 1825, now 27 years ago; that the confirmatory acts, chiefly that of 1824, required an immediate survey of the confirmations; that had the surveys thus directed been made at the expiration of the eighteen months allowed by the said act of 1824 for the offering of testimony, the owners would then have been able to designate their lands by the same witnesses who had just proven them before the recorder, without being obliged in 1846 to have recourse to other witnesses, whose fleeting memories may have been impaired, and whose statements on that account are more or less doubtful and liable to be impeached; that nothing in the record having been found to taint those claims with any appearance of fraud, the owners are consequently on the same footing with other owners of similar claims in the same and other common fields of St. Louis to whom the benefit of surveys has been timely
148 awarded. The long delay experienced by them in the location of their land by the United States cannot with justice be laid at their door, for it is well known that year after year they have not ceased to call the attention of the public officers to their case, and that all action upon it was deferred until the issue of the instructions in 1846—that is, upwards of twenty years after the date of the last confirmations—thereby introducing confusion in the matter and increasing the difficulties of its solution, and, in fine, that — it be thought that the difficulties now experienced in ascertaining the precise localities of the lots would not have existed in 1825, then the indulgence of passing over them should as far as possible be accorded to the present claimants to these lands; Certainly the negligence and long del-y of the Government officers should not be visited upon them by now refusing to settle their locations in consequence of a want of that definite evidence which time alone has deprived them of.

In the second or southern division of Mr. Cozens' surveys lots Nos. 13, 14, and 20 are confirmed by the acts of 1816, 1824, and 1836. The same reasoning advanced in relation to the lots Nos. 1, 4, 6, 7, 8, 9, 10, and 11 of the northern block may also apply to these, although investigation of the data relating to them will show that greater disconnections and discrepancies than in the latter lots may be set up against their locations.

Lots Nos. 2, 3, 5, 12, 15, 16, 17, 18, 19, and 21 in the Grande prairie were surveyed without confirmation, and no claim thereto, either in the form of grant (except, perhaps, No. 19) or an entry by Recorders Bates or Hunt, if of record. Some of them are bounda-

ries of confirmed claims, and others are mentioned in Riviere's depositions, entered at pages 28 and 29 of the examination, lettered H; but this latter class being not included in the list returned by Mr. Hunt, as prescribed by the 3rd section of the act of 26th May,
149 1824, they are, from your letter of the 4th February, 1850, to Messrs. Holmes and Whitlesey, considered by this office under your instructions as being unconfirmed. Owing to this defect, the law did not authorize the surveyor general to direct the survey of said unconfirmed lots. It was, however, necessary to locate them for the reasons given in the 3rd head of Mr. Cozens' instructions of 9th May, 1846 (Doc. A), to wit: "It will be necessary to run the end lines of the intermediate unconfirmed claims, so as to keep up the connections between those that are confirmed and for the purpose of putting the latter in their relative positions."

Then, in the view of this office, the surveys of those unconfirmed lots stand on the plats merely as links used to preserve the continuity of the confirmed ones. From the testimony contained in the depositions taken by Mr. Cozens (Doc. F), it appears that some of the unconfirmed tracts were possessed, cultivated, and regularly transferred by written deeds before the treaty of cession of Louisiana to the United States.

From this I infer that the owners neglected to avail themselves of the benefits of the acts of Congress passed in 1812 and 1824 for the completion of their titles; but they seem to have been protected by the supreme court of Missouri in the case of Page *vs.* Scheibel, already referred to, in which the following doctrine on the operation of those acts is held, to wit:

"The act (of 1812) confirmed claims to village lots and common-field lots, provided such claims were based upon inhabitation and cultivation prior to 1803; both the claim and the inhabitation or cultivation were essential to a title under the act, but the act did not point out any specific mode by which the proprietor was to make known his claim. The mere fact of a removal to an adjacent village and ceasing to cultivate the common field could not be re-
150 garded as an abandonment. All cultivation in these fields had ceased fifteen years or more previous to the passage of this act; nor did Congress require that the claim should be presented to some officers or tribunal of the Federal Government. It is true that this course was pursued by a large number of the villagers, as appears by the report of the recorder, which was confirmed by the act of 1816; but long after the passage of this act the Government still remained in ignorance of the locality of many of these claims, and the act of 1824 was passed mainly for the purpose of inducing the claimants to come forward and designate their lots in order that they might be distinguished by the United States surveyor from the public domain; but it has never been considered that this act of Congress was obligatory upon the claimants. If they thought proper to pursue the course to which Congress invited them and procure documentary evidence of their titles under the act of 1812, it was undoubtedly a 'great convenience to them as well as to the Government, but if they preferred to rely upon their capacity to

establish a possession or inhabitation or cultivation they could do so without forfeiting their titles. This results necessarily from the construction which was given to the act of 1812. It was held to be a grant *proprio vigore*, and any further action on the part of the Government or the claimants was but supererogatory as far as title was concerned. The act of 1824 only enabled the claimants to procure from the Government the evidences of title which had previously emanated. The mere inaction of the villager cannot therefore be considered as abandonment.'"

Of the unsurveyed, unconfirmed lots in the Grande prairie, embraced in Mr. Cozens' instructions, the following were not surveyed by him, to wit: Francis Bissonnette, ½ arpent; Auguste Chouteau, under Widow Bissonnette, 2 arpents; Samuel Bridge (same as J. B. Ortez), 2 arpents; —— Jeanette, 1 arpent; Jacob Lasabloniére,
151 1½ arpents; Antonio Reynar, 1 arpent; Claude Tiuon, 1½ arpents; Antonio Roy, 1 arpent; Jean Baptiste Hervieux, 2 arpents. These claims are entered at pages 40 to 45 of the examination H, with an abstract of their origin, boundaries, and confirmations, and also with remarks in each case, stating the reasons why they were not surveyed. The lot of Lasabloniere and Reynar were evidently granted in the Barriere Desnoyers common field, as probably also was that of Jeanette. As regards the tracts of Francis Bissonette, Bridge, and Tenon, data at present unknown may hereafter be alighted upon by which their localities can be ascertained and the proper surveys hereafter made.

The original depositions taken by Mr. Cozens in the progress of his surveys and numbered from 1 to 14, inclusive, have been transcribed in pamphlet form, which is included in the list of papers accompanying this report under letter F.

In order to facilitate the general investigation of the subject under consideration the depositions have been carefully examined and the data which they contain transferred in abstracts to the statement of each of the lots which they have any relation to in the ex-
152 amination H. This data has been further used and condensed in I, the resume of the examination H. Where lots are not noticed in the depositions contained in this document their respective statements show the fact by annotations in the words "no depositions."

Those documents mention two springs in the southern part of the Grande prairie as surveyed by Cozens, to wit, the "Marie spring" and the "Corneau spring," see page 24 of examination H, where the information bearing on them in the testimony is collected. To them Antoine Smith, in his affidavit of 6th August, 1851 (Doc. G), has added a third spring, which he calls "Barsaloux springs." Mr. Cozens having failed to notice in his returns these permanent natural objects, they are therefore not connected with his lines. This omission should be repaired, because from the statements of witnesses the springs in question determine the location of some of the lots, and, inasmuch as the present condition of Mr. Cozens' surveys will require in other respects further field operations for their correction, instructions will be issued at the proper time to some

other deputy to ascertain the positions of said springs and to connect them with said surveys should you direct them to be completed in their present localities.

It should, however, here be mentioned that much of the evidence taken by Mr. Cozens on his operations has been recently invalidated or greatly weakened by the recent statements of some of the deponents in depositions taken to perpetuate their testimony before commissioners of the courts of this State, and, since the nature of these examinations has been such that the deponents have been subjected to rigid cross-examinations, it is probable that more truth has been elicited in relation to the true locations of the claims surveyed by Mr. Cozens than he could possibly have obtained by his mode of proceeding. I have been requested by some of the parties to delay this report in order to enable them to file with it
153 copies of the said depositions, and in compliance have not completed the examination as early following the recent decision of the supreme court as I had intended; but after a reasonable delay, without the reception of the promised documents, and having no access to the originals now deposited under seal, as I am informed, with the recorder of the county until the meetings of the courts, I concluded not to wait longer, and therefore now close this branch of the subject with the hope that I may still be enabled to furnish you, before your final action on this report, with such further documents as appendices thereto as may throw still more light in the questions at issue.

2d. B. Cul-de-Sac common field.

Lot No. 22. Confirmed. Examination, p. 35. Resume, p. 5.	Joseph Sarin dit Larochelle north by Madame Camp and south by Emilian Yosty. See act of Congress approved 2d July, 1836.

In the instructions herein referred to Mr. Cozens was instructed to survey in this locality the 2-arpent lot of Joseph Sarin dit Larochelle, confirmed by special act of 2d July, 1836, and also the lots of Jacques Noise (2 arpens), Joseph Ride (1 x 30 arp.), Antoine Marchale and Joseph Vachard each 1 arpent. He only located the Larochelle tract.

The common field of the Cul-de-Sac, as it now stands, is that block of surveys shown on map D, commencing with survey No. 1832 for Yosty and reaching south to No. 3309 for Calve. Inasmuch as those surveys are greatly at variance with the evidence of record on which they are based and the subject of their location has been repeatedly discussed, I will on that account dwell at some length upon it with a view of an attempt at disturbing surveys of long-established possession, but to show, if possible, how the errors
154 in their locations occurred, and thus avoid a repetition of such mistakes in making further surveys.

The tract of Widow Camp seems by the record (see page 36 of examination H) to be the northernmost arpent in the Cul-de-Sac field. It is survey No. 903 on map D and adjoins along the north-

e-n and in part along the western boundary of survey No. 363 of Auguste Chouteau, commonly known as the Chouteau mill tract

This survey originated in a notice of claim given to the recorder in pursuance of the 2d section of the act of 1805, accompanied by a plat of survey for 200 arpents, executed by James Mackay on the 27th February, 1806. It is stated in the certificate to the plat that the land is claimed in virtue of different purchases made of divers individuals by the proprietor, Mr. Camp. The plat is a parallelogram bounded on the east by Auguste Chouteau and on the south by E. Yosty (see page 36, examination H), with lines corresponding in their bearings to the north, south, and west lines of the near part of the Spanish survey of 1803 for said Chouteau; near the eastern end of the camp plat as a creek represented running southwardly across the tract, and on the creek is shown a mill lying about equidistant from the northern and southern lines. The existence of this mill was twice proven before the board of commis'rs, who confirmed the 200 arpents to Mrs. Camp agreeably to her possession, as per certificate No. 903.

Antoine Smith pointed out on the ground the place of Mrs. Camp's mill, and the fact is stated in his deposition of the 6th August, 1851 (document G). It is shown on the diagram accompanying this statement and from actual survey to be at some 10 chains in a S. western direction from the N. western corner of Chouteau's survey No. 363. The only remains of the mill at present seen is a kind of dam made of earth, extending from the bank of
155 a small creek some 100 feet northeastwardly through the low ground, and which appears to have been raised for the purpose of damming the waters of the creek, the current of which is otherwise very sluggish. If Mr. Smith was correct in giving the exact situation of said mill, and I do not doubt the fact, his testimony taken in connection with the plat of the camp survey by Mackay as produced to the board in evidence with the notice of claim shows that the present location of survey No. 903 for Madame Camp is erroneous in the following particulars: 1st, it is not bounded east by Auguste Chouteau; 2d, it is not bounded along its southerly line by Yosty, except for a short distance; 3rd, the place where the mill should be according to Mackay survey is not near the eastern end of the tract; and, 4th, it is not the northern line of a common field—"that is to say, a tract composed of several contiguous but distant parcels of land, having a narrow front and an extended depth." See for the lot of Yosty page 37 of examination H.

I will now examine the survey for Larochelle which is connected with the surveys of Camp and Yosty.

Lot No. 22, on plat D, as surveyed by Mr. Cozens, is that of the 2 by 40 arpents claim confirmed to Joseph Saurin dit Larochelle by an act of Congress approved on the 2d of July, 1836, as being two arpents in front by 40 arpents in depth, situated in the "second line of concessions or grants adjacent to the city of St. Louis at a place called Cul-de-Sac, bounded on the front by the west line of forty-arpent lots and adjoining at its western boundary and depth to the

royal domain, on the north adjoining to the land of Madame Camp, and on the south to that of Mr. Yosty."

This description does not come from our records, for no evidence of this claim is found in them, its confirmation being coeval with its origin as far as the United States are concerned; neither is it known who gave the locality when it was submitted to Con-
156 gress, although it is supposed to have been the act of the party interested. The description, however, seems to have been extracted from a deed recorded as archive No. 656, at page 2 of vol. I, in the office of the recorder for St. Louis county, in which deed Saurin dit Larochelle sells to Gabriel Lachance, on the 4th of June, 1795, a lot of 2 by 40 arpents in the Cul-de-Sac, taking its front at the end of the 40 arpents and the depth adjoining to the king's domain, on the north adjoining to Madame Camp, and on the south to Mr. Yosty. The recital in the act is more explicit and seems to have been drawn by a person well conversant with the localities in question—*i. e.*, it is in the second line of concessions adjoining to the city of St. Louis—that is, either in the western half of the Chouteau tract or on land running parallel with and alongside of it on the north. Moreover, the act bounds Larochelle's lot in front by the western line of the forty-arpents lots—that is, of the first concession—all of which conditional limits should be found and applied in order to insure not only a correct but also an available location of the Larochelle tract.

The "first line of concessions" or the "forty-arpents lots" of the present examination was that block of the surveys of individual lots with a front of from 1 to 4 arpents by 40 arpents in depth. Surveyed by Duralde in 1770, '1, & '2, and at present known as the "common field of St. Louis," it extended five arpents in front southwardly within the eastern half of the survey made in 1803 by Mackay for August Chouteau of the land known as the Mill tract. (See that extension as shown on plat N of my report of the 4th August, 1851, on the Cottard and Motard claims.)

The second "line of concessions" appears to have been a block composed of sundry lots of the same description with those of the first line, situated west of the western front thereof, called "Trait quarre," and running therefrom 40 arpents to the westward. See for this second line of concessions the copy of the Chouteau
157 plat of 1803, sent as document P of the said report of 4th August, 1851; also the evidence of the Cottard and Mottard claims in document A to E of same report. Within this second line the Larochelle tract should probably be located yet.

Mr. Cozens' survey of Larochelle's lot does not comply with this position or with the requirements of the confirmatory act, although no blame can attach to him therefor, inasmuch as his instructions were not explicit on the subject. (See Doc. B.)

Mr. Edward Bates, in a letter to this office, dated the 17th February, 1851, a copy of which is given as Doc. M, remonstrates against the approval of Cozens' survey of the Larochelle lot on account of the interest he has partly in the land covered by this new location, setting aside Mr. Bates' interest in the premises, and, considering

his communication only as a document illustrating the subject, I will quote the language in which he clearly points out the defects of the Larochelle survey.

He says "to put the Larochelle claim where Mr. Cozens has placed it will require a removal of 40 arpents to the west and a falsification of the calls of the confirmatory act. It will cease to be in the second line of concessions or grants adjacent to the city. It will not be bounded on the front by the west line of the forty-arpents lots, nor on the north adjoining to the land of Madame Camp. In fact, the only call not falsified in terms by the new location is the name of Mr. Yosty, &c. That the Yosty lot and several other lots of the Cul-de-Sac were many years ago (by what influence I know not) removed out of their place, out of the second line of concessions or grants adjacent to the city of St. Louis, in order to make room for Mr. Chouteau's mill tract, so called, has been proven in court in my presence. This plat is still capable of full proof, and I believe
that a portion of the original Cul-de-Sac lots remain still on
158 your records (the surv. gen'l) in their proper places, in the
second lines of concessions." Mr. Bates further says "that Mr. Cozens' survey is shaped so as not to present a parallelogram of two by forty arpents, as required by the act, but an irregular figure suggested either by the fancy of the surveyor or the policy of the claimants."

A single glance at the map illustrates the accuracy of Mr. Bates' statement as regards the location of Larochelle's lot in respect of the original locality of the Cul-de-Sac, which is thought to have been on the land east of the present location of that common field. The records have all been examined, and the following facts have been elicited:

1st. Baptiste Riviere, in his deposition before Recorder Hunt (p. 28 of examination H), describing the lots in the southern part of the Grande prairie and coming to the land of Barsaloux, states that *is* was four arpents wide, but not forty in depth, as it was bounded east by the Cul-de-Sac. This lot of Barsaloux is neither confirmed nor surveyed.

2d. Opposite the entry of the lot of Amable Guyon or Veuve Lecompte's representatives (survey No. 2972 in the Cul-de-Sac as at present surveyed) Mr. Hunt wrote on the margin, "In Chouteau's mill tract" (page 39 of examination H). He also referred to a deed of Hebert Lecompte and wife to Auguste Chouteau, of 23d October, 1815 (p. 191 of Book A, in the office of the recorder of St. Louis county), by which they convey to said Chouteau, in order to avoid hereafter any "and all difficulties that could arise, a tract of land which we believe belongs to us and which we had by inheritance from Amable Guion, the said land commonly called Cul-de-Sac, about one league from this town, and containing two arpents front by forty arpents deep," &c. The deed avoids giving any boundaries for the land sold. I would refer you to Antoine Smith's testimony
(Doc. G) for the details of the transaction between Chouteau
159 and Lecompte owning it as a part of the Cul-de-Sac and
Chouteau's possessing it as a part of his present mill tract.

3rd. In the proof of Joachim Roy's claim, survey No. 3307 in the Cul-de-Sac, the witness Marly stated (p. 39, examination II) that this lot of Roy's was bounded north by Mr. Le Compte and east by Madame Camp. This east boundary was, however, subsequently given by the witness Riviere to be Auguste Chouteau.

4th. The concession to Francis Cottard, which lies evidently in the second line of concessions (see report of 4th August, 1851), is for one arpent asked for as being at the "trait quarre" or western end of the lands in front of the village (St. Louis) in the place called the Cul-de-Sac and going forty arpents in depth to the conceded lands and adjoining on the two sides the land cultivated by Mr. Motard. (See survey No. 3185 on plat D.)

5th. The Motard claim (see report of 4th August, 1851), survey No. 3182 on plat D, is founded upon a petition to Governor Delassus by Calvin Adams (who was the assignee of Motard through mesne conveyances) asking for the warrant of a survey of 7 arpents of land situate at the Cul-de-Sac by a deed of 7th November, 1800. Motard sold to Patrick Lee 7 arpents of land in front by about 40 in depth, situated in the prairie called Cul-de-Sac, opposite the river of Mr. Chouteau's mill, and, moreover, he sold and delivered to the purchaser 1½ by 40 arpents, bounded on one side by the land of Mrs. Widow Chouteau and on the other by that of Mr. Charles Tayon, situated at the same place as the tract above mentioned, with the sole difference that the latter lies in the "second concession of the town of St. Louis." The land of Tayon here called for became subsequently Collard's lot. Patrick Lee conveyed the two tracts that had originally been Motard's to Calvin Adams on the 22d August, 1803, with the same boundaries and the same locality—that is to say, in the Cul-de-Sac.

160 6th. In the evidence of the title to claim No. 832, Suzannah Dubreuil under Verdon, the lot is bounded on one side, as recited in a deed dated 6th November, 1796, by the land of Guillame Hebert Lecompte, the same which Auguste Chouteau bought in 1815 of said Lecompte and wife in order to avoid further difficulties, as before stated. (Page 39 of examination.)

I will add to the foregoing information collected from the U. S. records the following evidence, to wit:

1st. The deposition of Jas. C. Brown in the case of Page *vs.* Sheibel, already mentioned in the fore part of this report (p. 177 of vol. XI of Missouri Reports). "This witness stated" (says the judge who delivered the opinion of the supreme court) "that surv. No. 3309 there was a lot surveyed for Calve in the Cul-de-Sac common fields, which is much nearer to Little river (or Mill creek) than the lot in Grande prairie. The southern branch of the stream crosses the survey in the Cul-de-Sac. He was of opinion that the Cul-de-Sac common fields had been erroneously located; that the eastern line as now run, being taken as the base, the survey should have gone east for quantity instead of west. If these fields had been so run Calve's lot in the Cul-de-Sac would have touched Little river."

2d. The testimony of Antoine Smith, stated at large in document G of this report.

The old board confirmed four lots in the Cul-de-Sac, to wit: Suzannah Dubreuil under Verdon, certificate No. 832; Suzannah Dubreuil, in her own right, cert. No. 833; Widow Camp, cert. No. 903, and Emilian Yosty, cert. No. 1332. (See pages 38 & 39 of examination H.)

These outlots have a common feature, which, with an exception only (the confirmation to John Provenchere of 80 arpents in the common field of St. Louis, cert. No. 734), distinguishes them from all other outlots of St. Louis confirmed by the same board—that is to say, they are without grants or concessions of record. They
161 were awarded to the claimants on their possession, but the localities they had pointed out to the board have hardly been noticed in the subsequent surveys. A short review of their data may find here its proper place.

1st. No. 832, Suzannah Dubreuil under Verdon, sale dated 6th Nov., 1796, of a lot bounded by Guillame Hebert Lecompte; here the record is at variance with the survey; 2d, No. 833, Suzannah Dubreuil, in her own right; nothing but a notice of a lot two arpents bounded by the preceeding lot; 3d, Widow Camp, No. 903; no boundaries; has Yosty as a southern neighbor on Mackay's plat; here there is also a discrepancy; and, 4th, Emilian Yosty, No. 1332; bounded north by Jacques Labbe and south by Mr. Laroche, another difference again.

From an inspection of the map D it will appear that with one exception, that of survey No. 833, which adjoins No. 832, all those limits (few as they are), which were offered by the claimants themselves when they submitted their rights to the investigation of the board and which were to be considered in the surveys of the tracts, whether or not the confirmations were based solely on possession, have been disregarded in the said surveys, a fact which goes far towards strengthening the belief if the abstracts of the record and the descriptions just quoted are not already sufficiently plain to establish it; that the possessions of Camp, Debreuil, and Yosty were originally, either wholly or in part, within the present Chouteau tract, and that the two owners, having been dispossessed by Chouteau's survey in 1809 and its confirmation in June, 1810 (see report of 4th August, 1851), had their own and subsequent confirmations located on the nearest vacant land, regardless of placing themselves alongside their former neighbors.

By referring to pages 38, 39, and 40 of the examination (H), where an abstract of all the claims belonging to the present Cul-de-Sac is to be found, it will be seen that the boundaries of such
162 of those claims as were proven under the act of 1824 in most cases do not agree, or, in other terms, that a contiguous survey of those lots, including the four tracts confirmed by the board, cannot be executed from the calls of said boundaries. Deputy Surveyor Jos. C. Brown, who had contracted for that survey in 1835, ran out in 1838 the lots of Roy (No. 3307), Tebeaus (No. 3308), and Lecompte (No. 2973), and also, though uselessly, a lot for Calve (No. 3309), called for merely as a boundary of Tabeaus' and he had left unlocated on account of his inability to ascertain their proper sit-

uations and to harmonize the whole the tracts of Labbé, Ride Marchal, and Vachard, which were afterwards included in Mr. Cozens' instructions of 9th May, 1846, and who, like Mr. Brown, has made no returns of their survey and for the same reasons. See these reasons detailed at pages 46 & 47 of examination H. Another fact to be noted is that there is no data by which to establish the connection between the southern lots of the Grande prairie and those of the Cul-de-Sac. The only evidence on that subject is that given before Recorder Hunt by Baptiste Riviere at page 28 of examination H, to which I beg leave to refer you. If Riviere's statement of the successive order of the lots south from Corneau's lot (No. 15 on plat D) to Yosty survey, No. 1332, is correct, it goes to show besides a want of continuity that the lines of Yosty's lot were to run in the same direction with those of the lots on its north, but the courses of survey No. 1332 have diverged from the bearing of the said lines by an angle of about 14 degrees.

In the course of this examination of the lots and surveys of the southern end of the Grand prairie and of the Cul-de-Sac a fact has been suggested from the records bearing on those lots, viz., that there were, it would seem, two localities near St. Louis called Cul-de-Sac—

1st, the "Cul-de-Sac," and, 2d, the "Cul-de-Sac of the Grande prairie." The "Cul-de-Sac," it seems, was in the second line
163 of the concessions of St. Louis—that is, west of the "trait quarre" or western line of the first concession of 40 arpents, lots of the common field of St. Louis, prolonged southwardly across the present survey, No. 363, of Auguste Chouteau. In this Cul-de-Sac were located the lots of Widow Camp, Yosty, Lecompte, Mottard, Cottard, and those lots not of record, but which the former ones call for as their boundaries and which probably have been engulfed in the Chouteau Mill tract.

The Cul-de-Sac of the Grande prairie embraced the lots probably at its southern end, some of which are described in Livre Terrien No. 1 as being situated in the "Cul-de-Sac of the Grande prairie," such as Giles Henrion (lot No. 19 on plat D), Guillame Bizet (lot No. 14), and the two lots of Kiery Marcheteau dit Desnoyers, at page 26 of said Livre Terrien, the situation of which lots has nothing in common with those above described as being in the Cul-de-Sac proper.

It is true that the lots entered in the Cul-de-Sac by Mr. Hunt in 1825 do not show any distinction between the "Cul de Sac" and the "Cul-de-Sac of the Grande prairie," but it should be recollected that at that time the survey of Chouteau, made by Bent in 1809, had been confirmed and patented, though to a less extent than shown at present on the plats. (See report of 4th August, 1851.)

It had then done away with the Cul-de-Sac in the 2d line of concessions, and removed it westwardly to the vacant space between Chouteau's western line and the eastern line of Gratiot's survey, No. 3027, when, as before stated, some of the owners of the land in the former Cul-de-Sac had located themselves, after their ejection by Chouteau, from their proper localities, and, as any proof of cultiva-

tion or possession under the act of 1824 within his survey would have been of no avail, it is natural to suppose that their ancient neighbors sought to follow them to their new locations west of Chouteau. Hence his western boundary is called for as the
164 eastern limit of their possession, and even in their new positions this colony may bear some relative analogy to their former vicinage.

I have dwelt at length upon the subject of the Cul-de-Sac common field, not for the purpose, as I have said before, of promoting litigation by a disturbance of old surveys, the title to which has long been disposed of by the United States and the land covered by them now parceled out to innocent purchasers who bought under the faith of that security, but with the view only of collecting in a body for future reference all the information within the reach of this office that may tend to clear up the question so frequently agitated of the primitive locality of the said common field, and then set at rest the inquiry whether or not it has been in course of time altered or transplanted in consequence of the invasion of its original place by a neighboring survey. I also conceived that such an investigation became necessary to enable me the better to give a proper opinion upon the true location of Larochelle confirmation as made by Mr. Cozens in the Cul-de-Sac.

3d. C. Claims interfering with Cozens' surveys in the southern Grande Prairie and Cul-de-Sac fields.

The surveys interfering with Cozens' locations are:

1st. Surveys of the following New Madrid locations, to wit: Cert. No. 19 of Joseph Genereux for 160 acres, survey No. 2692; cert. No. 145 of Martin Coontz for 640 acres, survey No. 2499; cert. No. 161 of Joseph Hunot for 480 acres, survey No. 2500, & cert. 348 of James Conway for 200 arp's, survey No. 2712. See on plat D a note of the data relating to the location of these certificates, the date of the surveys, and the issue of patent certificates on these surveys.

2d. Survey in 1817–'18 of the 16th section of t'p 45 N., R. 7 E., belonging by law to the public schools of said township.

From a letter of the register of the land office at St. Louis to Comm'r Hayward, dated the 3rd August, 1833, it appears that the
165 selection of said section 16 for school purposes had been made previous to that day by the register under the act of 20th May, 1826, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for," and that the Secretary of the Treasury had approved of the selection, for in the said letter the register states that the original report from his office of the selection of school lands in compliance with the act aforesaid having been lost, as well as the letters of the Secretary of the Treasury containing the selections excepted to in said report, his only guide was an entry on the tracts marked in ink on his plats as approved, and which he distinguished with a cross in his new report of proposed selections of school lands accompanying his aforesaid letter of 3d August, 1833. In this latter report section 16 of t'p 45 N., R. 7 E., bears the cross-mark aforesaid,

and therefore its selection as school land seems to have been approved by the Secretary of the Treasury previous to the 3d August, 1833.

The following surveys will also conflict with Mr. Cozens' locations if the intended alterations and corrections to his surveys are actually made and their general locations approved in whole or in part, viz:

3rd. Survey No. 903, for Widow Camp. See the forepart of this report and pages 36 and following of examination H, and also 4th survey, No. 363, for Auguste Choteau. As this claim has been reviewed in detail in the Motard and Cottard report of 4th August, 1851, I beg leave to refer you to that document for further information.

Taking now a review of the whole subject, I will express the conclusion at which I have arrived from the examination of all the facts and data of the case which are presented in the foregoing communication, viz:

As to lots surveyed by Mr. Cozens in the southern part of the Grande prairie and numbered 1 to 21 on plat D.

166 1st. That as there was nothing in Mr. Cozens' instructions authorizing him to extend the lot of Rondeau No. 12 westerly some 27 chains beyond the northern and adjoining lot No. 11 for Laroche, and to continue that western offset in the lots 13 to 21, I am of opinion that these surveys should not be approved, and I believe that the western boundary of lots No. 2 to 21 should be a continuation of the western boundary of surveys Nos. 1276, 3285, 1583, 1561, 3304, 3303, 1461, & 1296, lying north of said lot No. 2, and that the eastern boundary of lots Nos. 11 to 21 should also be a prolongation of the eastern boundary of those north thereof—that is, from lot No. 12 to survey No. 1296, and that the proposed corrections preparatory to approval should be made under instructions from this office.

It is admitted that the depth of lots No. 2 to 10 may be and is exactly 40 linear arpents, but I believe that this fact is immaterial, since the supreme court of Missouri in the cases before referred to (Page and Sheibel and Page and Harrison) has, it seems, without any appeal therefrom to the United States courts, permanently fixed the eastern and western lines of the surveys from No. 1583 (Calve's) north to 1296 (Mainville's). It is, therefore, my opinion that these decisions have likewise also determined the eastern and western lines of the locations south thereof in the same common fields—that is, the survey No. 3285 and the lots surveyed by Cozens from No. 1 to 21. See entry of Baptiste Riviere dit Bacanne's lot at page 23 of examination H, where you will find proof of the continuation of the east and west lines mentioned to the southward of the Calves tract.

2d. That after the corrections suggested above are made in the surveys which they concern and their east and west boundaries are established as proposed, and the proper connections with natural objects also made, the surveys of the confirmed lots No. 4, Marechal; No. 6, Londe; No. 7, Faustine; No. 8, Vasquez; No. 9, Barribeau;

167 No. 10, Lacroix; No. 11, Laroche; No. 13, Riviere; No. 14,

Bizet; No. 20, Lacroix, be approved, as No. 1 for Conde has already been, and that they all be disposed of at this office in the same manner as the surveys recently made for Lebeaume & Brazeau, north of St. Louis—that is, with the express condition "of saving and reserving any valid adverse rights which may exist to any part thereof." This, I think, is due to the claimants, and it seems that the only objection to carrying out this recommendation lies in the discrepancies pointed out in some of the locations; but, inasmuch as similar objections existed in regard to the location of the Calve and Chancelier lots (which objections have been overruled by the supreme court of Missouri in their decisions affirming the correctness of said surveys Nos. 1561 & 1583), I think that these decisions should be a guide and a precedent for the final disposition of the surveys under consideration. Without some such latitude in the premises they cannot be located at all.

3d. In respect to the surveys of the unconfirmed lots No. 2, Bequette; No. 3, Deshetres; No. 5, Moreau; No. 12, Roundeau; No. 15, Corneau; No. 16, Berger; No. 17, Petit; No. 18, Liberg; No. 19, Henrion; and Dube, No. 21, they should after correction, as above stated, be allowed to remain on the plats with the annotations necessary to indicate their condition, and thus stand upon their own merits, in case this office is required to give certified copies of them for the ends of litigation and the promotion of justice to all parties.

4th. Relative to the lot surveyed by Mr. Cozens in the Cul-de-Sac (No. 22) for Joseph Sorin dit Larochelle, it is my opinion that this location should not be approved, since, as has been hereinbefore shown, it is misplaced and evidently at variance with the description in the confirmatory act of 2d July, 1836. The lots of Camp (No. 903) and of Yosty (No. 1332), which are the boundaries to the north and south of Larochelle, have also been mislocated, but if these surveys are good for the purposes of the parties who
168 obtained them, although being incorrect in themselves, they cannot be of any avail in the location of Larochelle's confirmation. Otherwise to take their present positions as correct and base the location of Larochelle on either of them would be only to perpetuate error, which we should avoid.

5th. In fine, it is not undertaken at this office to decide upon the final disposition of the still unsurveyed lots in the Grande Prairie and the Cul-de-Sac fields, because data at present unknown may yet be discovered to reveal their original localities.

The subject of the interference of these surveys in the southern part of the Grande prairie with the 16th school section and the New Madrid locations, existing to the south and eastward of the Grande Prairie common fields, is important, and to the apparent possibility (should the extension southwardly of these said surveys in the Grande prairie be approved) of a junction of the Grande prairie tract with the Cul-de-Sac, and of this with the Prairie des Noyers on the south and of the same tract on the east with the northwest corner of the St. Louis common field, near the Cardinal spring in the Watkins survey No. 658 (confirmed as being in the Grande prairie, see cert. No. 658 of the old board), which spring is laid down on the

plats heretofore transmitted to your office, may raise the question as to the extent of the out boundaries of the town lots, the commons and common field lots contemplated by the law of 1812 to be embraced in a general survey thereof, and should they be so extended as to include in one continuous line the commons, the Prairie des Noyers, Grande Prairie, and St. Louis common fields, the propriety and legality of any New Madrid surveys or locations within the boundaries referred to might also become questionable; at least, these are the points of examination that should not be overlooked in the prospective consideration of a subject so important as
169 that now presented as the matter of this report, and as such it is now suggested to you, being one upon which I have felt it my duty to pause ere I decide without further advice and instruction from you in relation to it or close the business of the public schools of this city. I would, therefore, request your early consideration of the subject, upon which a decision will settle also many collateral points now awaiting the result of your deliberations. Your advice and instructions how to proceed to final disposition of this business *is* earnestly solicited.

All of which is respectfully submitted.

M. LEWIS CLARK,
Surveyor General.

To the Commissioner of the General Land Office, City of Washington.

A, with report of 19th August, 1852.

SURVEYOR'S OFFICE, ST. LOUIS, *May 9th*, 1846.

SIR: You are hereby appointed and authorized to survey and connect with the adjacent surveys the confirmed private land claims below specified, or so many of them as can be located without interfering with field lots already surveyed in the names of other persons. The said claims are all situated in the Grande Prairie common field in the vicinity of St. Louis and in T. 45 N., R. 7 E., 5 p'l m'n, viz:

1".	Baptiste Riviere dit Bacanne	1 by 40	arpents
2".	Pierre Baribeau	1½ by 40	"
3".	Francis Biosonette	½ by 40	"
4".	Auguste Chouteau, under Widow Bissonette	2 by 40	"
5".	Samuel Bridge (same as J. B. Ortez)	2 by 40	"
6".	Auguste Condé	2 by 40	"
7".	Francois Faustin dit Parent	1 by 40	"
170 8".	Jeannette, free negro woman	1 by 40	"
9".	Pierre Lacroix	2 by 40	"
10".	Louis Laroche	1 by 40	"
11".	Jacob Lasabloniere	1½ by 40	"
12".	Frances Marschal	½ by 40	"
13".	Antoine Reynar	1 by 40	"
14".	Claude Tinon	1½ by 40	"
15".	Benito Vasquez	1 by 40	"
16".	Louis Lacroix	1 by 40	"

17". Antoine Roy ..... 1 by 40 arpents.
18". Jean B. Hervieux ..... 2 by 40 "
19". William or Guillaume Bizet ..... 1 by 40 "

I herewith enclose the following described, lettered from A to M, viz.:

A. Your appointment as deputy surveyor.

B. A copy of the printed general instructions to deputy surveyor for surveying private claims.

C. A diagram of the Grande Prairie common field so far as surveyed, with the adjacent surveys to the southward, eastward, and westward thereof, with descriptions on said diagram of all the corners which you may have to run from or close on.

D. A transcript from the files and records of this office and that of the recorder of land titles of the confirmed and unconfirmed claims, beginning with that of Francis Dunnegan dit Beaurosier on the N. east (already surveyed) and extending southwesterly so far as to include the unconfirmed claim of Barsoloux. These claims, it is believed, were originally connected with each other. There is, however, nothing of record to show the connection between Jacques Antoine Marechal, Dehetre & Moreau, and Corneau & Berger.

E. A transcript from the files and records of this office and
171 those of the recorder of land titles of Grande prairie claims which cannot be located without further proof as to their localities.

F. A diagram of confirmed and unconfirmed claims in the Grande prairie, of which that of Ignace Laroche is the most northern and Barsaloux's is the most southern. This is copied from a diagram left at this office by L. A. Benoist, and is believed to have been obtained from Colonel Paul's office.

G. An abstract of Duralde's notes of his surveys of the claims of Alexis Picart and Joseph Mainville dit Dechenes, which accounts for what is commonly called the "offset" in the Grande Prairie field.

H. The depositions of Baptiste Riviere and Rmé Dodier in relation to the localities of the several Grande Prairie and Cul-de-Sac field lots, lying southwesterly of the said Riviere claim in the Grande prairie.

I. A list of unconfirmed field lots in the Grande prairie.

K. A transcript from the recorder's office of the proceedings of the last board of commissioners in the case of Guillaume Bizet, claiming 1 by 40 arpents, which was confirmed by the act of Congress of the 4th of July, 1836, under decision No. 286.

L. A copy of so much of the acts of Congress of the 13th of June, 1812, and 26 May, 1824, as may be of use to you.

M. The deposition of Rene Paul as to the locality of the claim of Baptiste Riviere dit Bacanne.

In the execution of the surveys of the claims before mentioned you will in all cases be governed by the general instructions marked B, except only where they may conflict with the following special instructions, viz:

1st. Trace one or more of the lines of the Grande Prairie field

lots (already run) which can be properly identified, and at the
172 variation you find your compass to follow such line or lines all your surveys are to be made.

2d. All the long or side lines of the lots are to — parallel to the southwest boundary of survey No. 3285 in the name of Dunnegan, and the end lines are to be continuations of the S. eastern and N. western boundaries of surveys No. 1296, 1461, 3303, 3304, 1561, 1583, & 3285, except you are obliged to vary a little, so as to have exactly 40 arpents between said end lines, and except also you find that another offset was made to the northwestward in the original surveys, in which case you will report to this office and give your reasons for supposing such to be the fact.

3rd. It will be necessary to run the end lines of the intermediate unconfirmed claims, so as to keep up the connections between those that are confirmed, and for the purpose of putting the latter in their relative positions.

4th. The papers D & E show everything (as is believed) on the subject of the aforesaid claims that is to be found in this office or that of the recorder of land titles, and as the information which they afford is by no means satisfactory in respect to some of the claims it is expected that the persons interested will afford to you such additional proof as to the localities of their claims as it may be in their power to furnish.

5th. You are to respect only such evidence produced by the claimants as may be in writing and which ought to be filed in this office for future reference; but in the case of deeds being presented, which, of course, will not be given up to you, you will state in your field book the substance of the same, by which you may be governed. Give the names of the parties, dates, and the books and pages where they are recorded.

6th. In case you should find it impossible to keep up a regular connection of the several tracts for want of the proper data, and
173 any one or more of the claimants should be able to prove the precise situation of his or their original improvements, you can survey such tract or tracts so as to include the improvements. The lines, however, are to be run as mentioned under the 2nd head.

7th. You will observe that the width of several of the tracts on the list of unconfirmed claims (marked I) is not given. You will supply this deficiency, if possible, by the depositions of living witnesses or such other testimony as may be indisputable.

8th. Such claims on the list marked D as you may find to have been already surveyed by Jos. C. Brown under other names you will have nothing to do with, nor are you to survey any claims where their localities are doubtful.

9th. As the lands are very valuable on account of their proximity to the city of St. Louis, your surveys may give rise to a good deal of litigation unless the greatest possible care be taken to put each claim in its proper place. It is therefore hoped that you will not suffer yourself to be biased by any one, but to act in your capacity as deputy surveyor without fear, favor, or affection.

10th. Instead of noting your surveys in the order in which the

work is done on the ground, as prescribed in the general instructions, you are at liberty first to make rough minutes on the ground, from which make out a fair set of notes in a book to be kept for that purpose, so that the notes of each survey may be complete without having to refer to the notes of another survey.

11th. All papers herewith furnished you (except your commission), together with such written evidence in relation to the aforesaid claims as may come into your possession, are to be returned, with your field-notes of survey, to this office.

Three months from the date hereof are allowed for making your returns to this office, when, if your surveys shall be approved
174 by the surveyor of public lands in the States of Illinois & Missouri, you will be paid on account of the United States at the rate of six dollars per mile for the lines of the surveys, as well as their connections, under the appropriation made for the survey of towns & villages in Missouri, except in the case of Guillaume Bizet, for which you will be paid, under the appropriation for the survey of private claims confirmed by the act of 4th July, 1836, at the rate of five dollars per mile for the lines of the survey and connections.

I am, very respectfully, sir, your obedient servant,

F. R. CONWAY,
Surveyor Gen'l.

William H. Cozens, Esq., deputy surveyor, present.

B, with report of 19th August, 1852.

SURVEYOR'S OFFICE, ST. LOUIS, *May 9th*, 1846.

SIR: You are hereby authorized to survey and connect with the adjacent surveys the following-described private land claims in the Cul-de-Sac common field in the vicinity of Saint Louis and in t'p 45 N., R. 7 E., 5 p. m'n, viz:

1st. Joseph Sorin, alias Larochelle, 2 by 40 arpents.

2nd. Jacques Noise dit Labbe's legal representatives, 2 by 40 arpents.

3rd. Joseph Ride or Ride's legal representatives, 1 by about 30 arpents.

4th. Antoine Marechal's legal representatives, 1 by 40 arpents.

5th. Joseph Vachard Senior's legal representatives, 1 by 40 arpents.

In the execution of your surveys you will be governed by so much of the general instructions to deputy surveyors for sur-
175 veying private claims and your special instructions of this day in relation to the Grande Prairie field lots as may be applicable.

Three months from the date hereof are allowed for making your returns to this office, and if, on the examination thereof, your surveys shall be approved, there will be paid to you on account of the United States at the rate of six dollars per mile.

Herewith enclosed you will receive a paper containing extracts from so much of the files and records of this office and that of the United States recorder of land titles as relate to the confirmation

and localities of the aforesaid claims, which paper you will please return with your field-notes of surveys. For descriptions of corners in and near the Cul-de-Sac common field you are referred to the paper marked C, which accompanies your instructions, as to the surveying of the Grande Prairie field lots.

I am, very respectfully, sir, your obedient servant,

F. R. CONWAY,
Surveyor General.

To William H. Cozens, Esq., deputy surveyor, present.

(Here follows diagram marked p. 175*a*.)

Office of the Surveyor General for Illinois and Missouri.

ST. LOUIS, *30th January*, 1855.

SIR: Pursuant to the instructions of the 23rd of August, 1853, with which was returned the report made to your office on the 19th August, 1852, by the Surveyor General Clark upon what is known as the Cozens survey of the Grande prairie and Cul-de-Sac common fields for re-examination and further report, I have re-examined the matter and submit the result of that labor.

176

As directed, the facts in each case have been investigated and they are embodied in a separate report on each survey.

This arrangement, which will facilitate to test more readily the location of each claim distinct from that of others, has necessarily caused more repetitions of facts to occur which it was found impossible to avoid, because in many instances the evidence is common to and bears upon neighboring or coterminous tracts.

The accompanying paper No. 1 is a copy of the notice given on the 14th September, 1853, to all interested parties. From those parties I have received the following arguments, to wit:

1st. Adverse to Cozens' surveys.

The argument of Willis L. Williams, Esq., dated the 15th July, 1853. See paper No. 2.

The argument of Barton Bates, Esq., dated July, 1853. See paper No. 3.

The argument of R. M. Field, Esq., dated 12th July, 1853. See paper No. 4.

2nd. In favor of Cozens' surveys.

The argument of John Hogan, Esq., dated the 28th October, 1853, for the heirs or representatives of Auguste Conde. With it is a translation of the deposition of the late Antoine Smith. See paper No. 5.

The argument of P. J. Hurck, Esq., dated the 31st October, 1853, for the heirs or representatives of Benito Vasquez. See paper No. 6.

The argument of P. J. Hurck, Esq., dated the 25th of November, 1853, for the heirs or representatives of Francois Faustin dit Parent. See paper No. 7.

The argument of Thomas C. Reynolds, Esq., dated the 26th November, 1853, as owner of Vasquez confirmation. See paper No. 8.

The argument, without date, of C. C. McClure for the heirs
177 or representatives of Pierre Barribeau. It is accompanied by Exhibits Nos. 1, 2, 3, 4, 5, 6, & 7. See paper No. 9.

I have also received the application of David Desilets, filed the 15th Nov., 1853, for the survey (within the range of Cozens' location) of the field lot of two arpents confirmed by the acts of 1812 & 1824 to Vincent Bouis' legal representatives.

With the application are four exhibits tending to show the character of Bouis' claim and its location. See paper No. 10.

At the end of my report of the 31st January last, on an application to alter surveys in the Grande Prairie fields, I stated that we had "now a clear and undisputable location of the lots of the Grande prairie down to Kiercereau, survey No. 3304. The lots south of it will be examined in the report upon Cozens' surveys required by your instructions of the 23rd August, 1853, and to which they properly belong." According to that statement I have examined those lots south of Langlois, but north of the survey No. 1276, for Conde's legal representatives, which is the most northern location by Cozens, the examination of those intervening surveys was necessary to connect the Duralde locations, ending with Kiercereau's with those made by Cozens. They are survey No. 1561 for Chancelier, No. 1583 for Calve, and No. 3285 for Dunnegan. They have been examined only by the evidence of the United States records and by that given to the deputies who executed them. The facts elicited thereby lead to the conclusion that they have been properly and accurately located according to the grants and the possession of the owners. As to the testimony, I would call your attention to one of its features: that it was not given in lawsuits at the request of interested litigants, but was sought for by scrupulous and faithful deputies, with the sole view to reach truth so as to insure the accuracy of their field operations. As such, this testimony
178 is entitled to great weight and confidence, for, viewed in connection with the record evidence, it clears up a point which in this latter data is left obscure when standing by itself; it is the existence of Calve's lot between Chancelier and Condé, whose concessions in 1766 & 1770 call for Hervieux between them, though Calve's was in 1805 and 1825 the northern boundary of the northern arpent of the Condé lot—that is, the lot which Dunegan had acquired of Condé, and he sold to Mullanphy. Calve's tract being then properly located, it follows that the survey of Dunegan southward of it is also properly made in conformity with its calls. In this case the testimony of the late surveyor, René Paul, is conclusive, after having attentively examined the field-notes of Eiler's survey for Dunegan. He certifies that the location is in "conformity to the testimony given in 1825 by Baptiste Riviere alias Bacanne and Rene Dodier before the United States recorder, and the tract of land lately surveyed is the same that had been pointed out to him on the ground by the aforesaid witness."

The arpent of Dunegan being traced in its origin to the conces-

sion to Condé of 16th January, 1770, and the arpent confirmed to the legal representatives of Condé by the board under certificate No. 1276 being also a part of the same concession, it is clear that those two arpents are contiguous, and that survey No. 1276 of the latter arpent could not be located on any other land than that embraced within its lines—that is, the southern line of Dunegan must be the northern line of Condé's legal representatives. This Condé arpent was claimed before the old board by Louis Lemonde, without the production of a written instrument of his right thereto. John Baptiste Lemonde states in his affidavit that he heard his father, Louis Lemonde (the claimant), say the arpent was acquired at the church door in Spanish times by Mr. Ceré, who gave it to his mother. If the statement is correct no record remains
179 either of the public sale or of the donation. Lemonde pointed out a spring on or near the west end of the arpent. The position was connected by Mr. Cozens with the eastern line of survey No. 1276. It lies a short distance N. W. of the S. W. corner. Touching this spring the witness says: "I did not think the spring to which my father used to take my sister and myself was on our lot, but supposed it was on the next lot south, though I do not know that there has been any surveys made. I recollect that the old people used to put their watermelons in the spring to cool and come there at noon altogether to eat them." The Dunegan arpent in the deed of 1805 and in the entry by Mr. Hunt in 1825 is bounded south by Jacques Marechal.

This Jacques Marechal had no concession of record nor any confirmation resting upon occupancy or cultivation; neither is there any record of purchase or sale of land by him in this southern part of the Grande prairie; therefore, if he ever had any right to the southern arpent of the Condé tract, that right, being only supported by the mention thereof in the two above documents, cannot be taken up by this office to oust or impair the Condé title, fortified as it is by a written grant and a confirmation which law has rendered final as against the United States.

Survey No. 1561, Chancelier; No. 1583 (Calve), No. 3285 (Dunnegan), and No. 1276 (Conde's representatives), being all contiguous from north to south in the order indicated, I have thought it proper, in addition to the separate statements on each of these surveys, to prepare a condensed synopsis of the data bearing on their location. It accompanies this report, and is No. 27 of accompanying papers.

Southerly from survey No. 1276 (lot No. 1 of Cozens') there are, until we reach No. 6 (Conde's, which begins another group of contiguous locations), lot No. 2 (Francis Bequette), lot No. 3 (Deshetres), lot No. 4 (Frances Marechal, Senior), and lot No. 5 (Moreau). Of them No. 4 is the only one confirmed, and is therefore stand-
180 ing isolated from other confirmations.

I believe that a brief digression on these lots and a notice of the deed connected with them will not be superfluous for the intelligence of this report or irrelevant to its object; for in indulging in it I shall not lose sight of the general principle set forth in the instructions of the 23rd August, 1853, that the surveyor general "is

not authorized to have those lands surveyed except as public lands the claims to which have not been confirmed by or pursuant to any act of Congress"—that is, whether the surveys for Bequette, Deshetres, and Moreau be accurate or not, the approval thereof for the want of confirmation is beyond the province of this office.

There is no record proving the connection of the four above-named lots with each other. There is, however (as will be seen), evidence that Louis Deshetres, Senior, owned a tract of land 2 by 40 arpents in the Grande prairie adjoining the land of Conde; also that Nicholas Marechal had a tract of 2 by 40 arpents in the Cul-de-Sac of the Grande prairie; and the fact of their ownership being established, an attempt will be made to show by what means the four individuals above named acquired the possession of the tracts as surveyed in their name.

Archive No. 2302, vol. 3, p. 363.

Inventory of the estate of Louis Deshetres, dated 13th August, 1770.—In it there is a lot of 2 by 40 arpents in the Grande prairie without boundaries. By referring to the grant to Condé it will be seen that the lands conceded to Conde in the same year that Deshetres died called for Deshetres as a boundary. The grant to Condé is dated January 10th, 1770, and, as stated — Deshetres' inventory, August 13th, 1770, the inventory then established Deshetres' ownership of 2 by 40 arpents, and the grant to Conde established the location.

181 The Marechal tract has in support of its extent and ownership the following:

Archive No. 2301, vol. 3, p. 357.

Inventory and adjud*u*cation of the estate of Nicholas Marechal, dated 10th September, 1770.

A tract of 2 by 40 arpents, situated in the Cul-de-Sac of the Grand prairie, without boundaries, allotted to the widow of said Nicholas Marie Irlet.

There are no transfers of either of the two tracts in question prior to the change of government which will throw any light upon the question of location. Deshetres did, as appears from his inventory prior to August 13th, 1770, and his heirs made no transfers of record until in 1829, when Louis Deshetres, Junior, authorized Joseph Thibeau to make sale of his property, and in 1834 a sale was consum-ated, as will be seen by the chain of title which will be given hereafter. From this the conclusion may be drawn that between 1770 and 1834 the heirs or legal representatives of said Deshetres were in possessession. We find, however, that a part of the 2 by 40 arpents originally owned by Louis Deshetres was, in 1825, said by the witnesses Baccine and Dodiet to have been formerly in the possession of Francis Bequet. (See Francis Marechal's entry, ex., p. 11.) When Mr. Cozens made his survey he found the tract in possession of parties who derived their title from

Francis Bequet, and located the same in the name of said Francis Bequet according to the possession of those claiming under him. This fact, taken in connection with the sale in 1834 by Louis Dehetres, Junior, of only one of the two arpents of Louis Deshetres', Senior, original tract, tends to prove that although there is no transfer of record from Dehestres to Bequet, this latter, with the assent of the legal representatives of the original owner, acquired, probably by verbal transfer, title to the land surveyed in his name under possession.

182 We will now proceed to show in what manner the present holders acquired title to the 1 by 40 arpents surveyed by Cozens as the Bequet tract No. 2 of his surveys.

As already said, there are no transfers of record in the name of Francis Bequet of the tract in question, nor any transfer to him in Book G, No. 6, page 446. The testimony of Antoine Smith is perpetuated, in which he testifies that prior to the change of government in 1803 Francis Bequet owned and cultivated the lot in question; that he died prior to 1803; that he never knew said Bequet to have a wife; that at the time of his death he left living his father, a brother, and two sisters, viz., Joseph Bequet, his father; Madame Hotiz, his sister; Madame Louis Barrada, his sister, and Gabriel Bequet, his brother; that this Gabriel married; that both himself and wife died long since and without children; that Madame Hotiz died about 1849, leaving six children, and that Madame Barrada is also dead, and left children living in St. Charles. From the foregoing deposition it seems that after Francis Bequet's death and the death of his father and his brother Gabriel, Madame Hotiz and Madame Barrada were the sole heirs of said Francis; and from ce-tain proceedings had in the circuit court of St. Louis county, April term, 1851, file No. 270, it appears that the central part of the lot in question, covered by the New Madrid location of Martin Coontz, was in possession of one James Hardeman, as tenant under Daniel D. Page, and suit was brought by the heirs of Madame Hortiz and Madame Barrada to recover the same. The suit is still pending. The parties in it are descendants of Francis Bequet, and now have *in* possession of those portions of the tract in question not held adversely by Mr. Page under the New Madrid location of Martin Coontz.

Deshetre's tract, No. 3, of Cozen's surveys.

As already stated, the claimants under Bequet are in possession of the north part of the 2 by 40 arpents originally owned by

183 Deshetres and adjoining the Conde tract (No. 1276). In the following chain of title, Louis Deshetres sells the same land according to the description, but the parties under Deshetres have possession of the southern arpent, to wit:

Book Q, p. 356—power of attorney from Louis Deshetres to Joseph Thibeau, dated Oct. 18th, 1829. Book U, p. 101—sale by attorney, Joseph Thibeau, to Hugh O'Neil, Junior, and John Beret, dated 29th September, 1834, tract in Grand prairie containing forty arpents, fronting eastwardly on the line of the Grande Prairie fields as es-

tablished by the Spanish authorities, and supposed to be bounded on the north by Auguste Conde, south by Louis Laroche. Book H 2, page 313—quitclaim from John Bent and wife to Hugh O'Neil, dated March 6th, 1839, for undivided half of above.

Book O 3, page 370—deed by judge of probate, dated Dec. 17th, 1844, from Alexander Hamilton to Daniel B. Page for all his right and interest in and to the same tract by the same description. Book O 3, page 371—quitclaim, March 22nd, 1845, from Daniel D. Page and wife to Ellen Ann Taylor's trustees.

This deed conveys a part of the tract in question, and was made in exchange for part of the Francis Marechal lot, which Mrs. Taylor's trustees had acquired, as will be seen hereafter, under Mrs. Taylor. P. L. Vandeventer, Esqr., now holds the land in question.

We may therefore sum up the Deshetres case by saying that Louis Deshetres owned in 1770 the two arpents adjoining Conde to the south; that he died in that year; that his son, Louis Deshetres, Jun'r, appears to have remained the owner of part of it until 1834, when he sold the same, and that under that sale his present assignees claim and hold it.

It is true that the records would place the Deshetres lot No. 3 alongside of Conde; but this is immaterial, for this office has
184 no control over these unconfirmed lots, which were located by Cozens according to the possession of the owners, and to the courts belongs the right ofdeciding upon its accuracy.

Francis Marechal's rep's ½ arp't, lot No 4.

It has already been stated that Nicholas Marechal was the owner of a tract of 2 by 40 arpents in the Grande prairie, and that after his death the tract was allotted to his widow, Mary Jeanne Irlet. Madame Marechal did not convey the same, and at her death the title passed to her children. There were in 1770 eight of those children. No deed from them for the land in question prior to the change of government is found of record. The first record evidence after the change shows that Francis Marechal, a son of Nicholas Marechal, claimed ½ by 40 arpents of the tract (ex., p. 11), and that Francis Moreau married Catherine, a daughter of said Nicholas: had a lot north of Conde (ex., p. 13). This lot of Moreau's, which from his connection with the Marechal family is apparently a part of the Nicholas Marechal tract, has been surveyed to the amount of one arpent by Cozens, according to the possession of the present holders of Moreau's title. The remaining ½ arpent of N. Marechal's lot does not appear to have — claimed, or it may be that the two original arpents were reduced to ½ arpents.

The chain of title to the ½ arpent confirmed to Francis Marechal's representatives is as follows:

Book E, p. 381—deed of 22d Feb'y, 1816, from Francis Marechal to Antoine Smith, among other property a piece of land ½ an arpent in front by 40 arpents in the Grand prairie, bounded south by lot formerly of Louis Deshetres, north by a lot formerly of Francis Bequet. Same confirmed to Francis Marechal by recorder of land titles, and by said Marechal sold to said Smith.

NOTE.—The boundaries in these two deeds differ; but as
185 Marechal made but the one deed to Smith, both clearly refer to the same land. Book S, No. 2, p. 360—power of attorney, dated 31st of July, 1841, from John Dougherty, of Iowa, to Wm. D. Dougherty. It recites that he is the owner of the tract described as above, and confers full authority to sell, &c.

Book T., No. 2, p. 314—deed of 5th Sept., 1851, from W. D. Dougherty to Ellen Ann Taylor's trustees.

It conveys the same land as above described.

Book Q, — 3, p. 19—quitclaim of 22d March, 1845, from Ellen Ann Taylor and trustees to Daniel D. Page and Louis A. Benoist. It conveys a part of the tract as above described in exchange for part of the Deshetres tract conveyed to Mrs. Taylor's trustees, as stated in the Deshetres case.

Mr. Vandeventer now holds under Mrs. Taylor a portion of the tract, and Messrs. Page and Benoist another portion.

The foregoing data show that the present claimants go back for title to 1816, when they acquired it of Francis Marechal, whose father held in 1770.

The tract was surveyed by Mr. Cozens according to the possession of the parties, which possession does not conform to the calls in the deeds; but the only difference is the placing Marechal south of Deshetres by Cozens, while the deeds and witnesses place the Marechal tract north of Deshetres.

Francis Moreau's lot, No. 5.

As stated in the foregoing case, this Moreau tract appears to be a part of the tract which, in 1770, was owned by Nicholas Marechal, at whose death it was allotted to his widow, who died without having conveyed, and the same was inherited by her children, one of whom, Catharine, married Francis Moreau. (See Archive No. 2010.)

There are no transfers by any of the children of Marechal
186 until the deed already mentioned of Francis Marechal to Antoine Smith. In 1825 Baccané and Dodier gave a location to Moreau alongside and north of Condé (ex., p. 13), at the precise place where Cozens has surveyed the Moreau lot. We have seen in the Condé case that in 1830 the Condé tract was sold by the sheriff, as the property of Charles Sanguinette to John Mullanphy and Moreau is described as the north boundary. (Book Q, p. 227.) In book U, p. 350, is recorded a deed of 13th July, 1835, from sundry persons, heirs of Francis Moreau, to L. A. Benoist, conveying a tract of 1½ by 40 arpents in the Grand prairie, bounded north by a vacant lot which separates it from Antoine Marechal and south by Auguste Condé. These references seem to point to but one conclusion, to wit, that Francis Moreau, in right of his wife as one of the heirs of Nicholas Marechal, entered upon the land in question and occupied and cultivated the same, and that after his death his heirs still possessed the same, and that under them the parties in possession now hold.

The foregoing data on lots Nos. 2, 3, 4, & 5 seem, then, to prove the following facts:

1st. That upon the space embraced by them there was in the early settlement of the Grand prairie two lots of 2 by 40 arpents each—that is, the lot of Louis Deshetres, bounded north by the grant to Condé under surveys No. 3285 & 1276, and that of Nicholas Marechal (which if, as it appears, the Moreau lot is a part thereof), was bounded south by the lot of Condé, numbered 6.

2nd. That the two arpents of Deshetres have been located by Cozens as Nos. 2 & 3 upon the possession of the present claimants under Deshetres and Bequet.

3rd. That there is nothing in Bequet's title to show that it derived from Deshetres' ownership.

4th. That if the Nicholas Marechal lot was once 2 arpents, and the confirmation to Francis Matechal lot No. 4 and the possession
187 under Moreau's lot No. 5 have their origin in the same, it is now reduced to 1½ arpents.

5th. That as the Moreau lot is located according to the record—that is, north by Condé—it follows that the confirmation of Francis Marechal north of Moreau is evidently within the lot of 2 arpents of his father, Nicholas Marechal.

6th. That the said confirmation to Nicholas Marechal is located by Cozens, in accordance with the present possession of the claimants under said Francis.

We are now arrived at another block of the Cozens surveys, which are all confirmed and join each other in succession from north to south, viz., lot No. 6, for Condé; No. 7 (Faustin dit Parent), No. 8 (Vasquez), No. 9 (Barribeau), No. 10 (Lacroix), No. 11 (Laroche), No. 12 (Langlois), No. 13 (Baccane), and No. 14 (Bizet), said lots Nos. 12 and 13 covering the confirmation to the representatives of Vincent Bouis.

Beginning, then, with the lot No. 6 of Condé we find by the data relating thereto that the land north of it—that is, Moreau's—although not confirmed, is now in possession of parties holding under his heirs by a deed executed some twenty years ago, and that the lot adjoining Condé to the south, that of Parent, called for as being said south boundary, as the lot of Moreau is the northern one, is confirmed as being south of Condé, and, like Moreau's land, is now in the possession of persons holding under Faustine, with this difference, however, that in the latter case the present owner is the direct heir of the confirmee. The Condé lot is also possessed by the heirs of the original confirmee. It was sold in 1830 by the sheriff to John Mullanphy for Charles Sanguinette, the son-in-law of Auguste Condé, but about the same time or before another heir, Louis A. Benoist, was or came in possession, built a house, and made other improvements. This possession still holds, and
188 if it is contested (otherwise than by the holders of New Madrid locations and school lands) the controversy is restricted to and carried on by co-heirs of the Condé estate. Natural objects connected with this lot have been ascertained by recent field operations, such as a house built some thirty years ago by the aforesaid Louis A. Benoist; a spring hard by known as the Condé spring, and a large sink hole a short distance east of the east front of the lot.

It has been asserted that Moreau's lot not being confirmed, this defect in his title renders a location for Condé south of Moreau impossible, and therefore annuls it *de facto*, or, in other terms, that there is no confirmation for a given tract of land unless all the land adjoining thereto be likewise confirmed.

This doctrine is not warranted by any of the successive laws which brought about the confirmation of our private land claims, from the act of 2nd of March, 1805, to that of the 4th of July, 1836, for in none of them is the confirmation of any grant either derived from the French and Spanish governments or from the United States negatived, because it happens to be bounded by an unconfirmed claim, nor has any practice sanctioned the doctrine. For instance, the old board confirmed a certain number of isolated town and field lots in and near St. Louis. Does it follow, then, that such confirmations were void until the neighboring lots were confirmed by the subsequent acts of 1812, 1816, 1824, & 1836? Certainly not, for if these adjoining confirmations had never taken place the former ones could not on that account cease to have been made unless there had been in the acts proclaiming them conditional provisions expressly enacting their future nullity in this contingency. Again, if it be said that this new principle applies to confirmations under the act of 1824 only it is still equally inoperative,

for there is in the towns and villages of Missouri named in
189 the act not an inconsiderable number of lots which it confirmed that have for their boundaries the lots of individuals who never asked for a confirmation thereof; but these adjoining vacancies have not and could not have been considered as injurious to the confirmations of their neighbors because of the silence of the law on the subject and the manifest injustice of construing it with such a restriction.

Lot No. 7. Faustin dit Parent.

It is bounded north by Condé and south by Laroche. The north boundary appears in the entries of both claims and in the deed of the 30th July, 1830, by which the Condé lot was sold to John Mullanphy. This lot of Faustin has not been subjected to any deed and is in the possession of his direct heir, Mr. Elzear Blanchard, in right of his wife.

We have seen that this lot was first claimed as being two arpents in width with the south boundary of Laroche; but that the confirmation was subsequently reduced to one arpent in Mr. Hunt's list. Although the entry of the two arpents was left untouched in the description of the lot in said list and in the body of the minutes, this appears to be satisfactorily explained in the arguments Nos. 6 & 7, furnished by the agent of the claimants of the Faustin and Vasquez lots.

One of the sons of Benito Vasquez, so frequently mentioned in our early records, married the daughter of Faustin, and died leaving issue. His brother claimed the lot in behalf of his brother's children, but included in the claim the one arpent that had been confirmed to said Benito's representatives by the act of 29th April,

1816. This latter arpent is, as asserted, the one that was subsequently withdrawn from the confirmation to Parent, because, as stated verbally by the aforesaid agent, there were, beside the grandchildren of Faustin and Benito Vasquez, other heirs of
190 Vasquez, who had in the lot confirmed to their ancestor an interest distinct from that of said Faustin's grandchildren, and, at their request, the alteration was made in the Faustin confirmation.

As to the south boundary of Laroche, called for in Faustin's entry, we have, in the inventory of Louis Laroche in 1770, 2 by 40 arpents owned by him at his death, which were bounded on one side by the Widow Parent, alias Faustin, and on the other side by Rondeau.

This call is evidence that Parent, as early as 1770, cultivated land adjoining to or in the near vicinity of Laroche's. There are no conveyances of record or any documentary evidence, except the above inventory, to show that Parent or his legal representatives had a claim to a lot in the Grand prairie until 1825, when the claim was proven up as bounded by Condé and a lot formerly owned by Louis Laroche, this being the southern limit.

In the lot of Laroche, the north boundary is also Faustin dit Parent.

Then we have by the record data showing that Parent's claim adjoined Condé on the south, and also that it adjoins Laroche on the north; this would give to Parent, according to the well-established locations of Laroche and Condé, a width of 4½ arpents, instead of one arpent confirmed; but, as the claimants under Parent have in their present possession the lot south of Condé, the same appears to be properly located adjoining Condé, instead of adjoining Laroche.

We will now examine the locations of Vasquez, Barribeau, and Lacroix, between the Faustine and Laroche lots. Lot No. 8, Vasquez.—This lot was confirmed by the act of 29th April, 1816, but the description in the records does not give any location, except that it is situated at the "Orchard." There was in the Grand prairie a place known as the "Orchard," which derived that
191 name from an orchard planted in early times on the tract granted to Laclede and confirmed as No. 1261 to Watkins under Verdon, but, as this is about two miles north of the locality now under consideration, it is evident that the orchard upon the Watkins tract is not the one intended in the description of the Vasquez lot.

I would direct your attention to the remarks in argument No. 8 on the subject. I will only state that the orchard, "evidently of great age," spoken of by Mr. Reynolds as being near the western end of the lot of Vasquez and connected with the "Olive-street plank road," seems to be an old but well-preserved orchard which from its proximity to the said plank road must be in the Martin Coontz or Widow Camp's survey easterly of the Laroche tract.

The Vasquez lot has no connection of record with that of Faustin's, though it was related to it, as was stated in the remarks on that latter claim, but Vasquez is called for the northern boundary of Barribeau in the entry of this claim, which is located immediately

south of Vasquez as lot No. 9. See also Pierre Barribeau's deed of 8th of May, 1829, describing his northern neighbors being Vasquez. No deed for the lot of Vasquez appears of record until 1852—that is, at too late a period to avail of the boundaries it relates for the location of the land, this transfer only proving that the possessor of ownership had not till then departed from the Vasquez family.

Lot No. 9, Pierre Barribeau, 1½ arpents, bounded north by Benito Vasquez lot No. 8 and south by Joseph Lacroix lot No. 10.—This lot was the subject of transfer in 1829 from Pierre Barribeau for the benefit of his children to Joseph White. It is bounded north by Vasquez and south by Joseph Lacroix. The present possession is held under title from Barribeau's heirs. A spring
192 known as the Barribeau spring lies on this tract and has been connected with its lines by Mr. Cozens.

Lot No. 10, Louis Lacroix.—This lot is bounded north by Pierre Barribeau and south by Paul Lagrandeur alias Guitard. It has been shown that according to all appearances the name of Louis in this case is mistaken for that of Joseph. The lot of Barribeau is also bounded south by the lot of Joseph Lacroix. It has also been stated that Paul Lagrandeur alias Guitard had no concession or confirmation in this southern part of the Grand prairie, and that he neither bought nor sold any land therein.

Lot No. 11, Louis Laroche, is bounded north by Parent and south by Rondeau. There are no data of record connecting the lot of Vasquez with Faustin's, his neighbor on the north, and the lot of Lacroix with Laroche's on the south.

I will here indulge in some details: It has been seen that the location of lot No. 6 for the representatives of said Condé is well established by the possession of said representatives, the ascertaining of natural objects on the land, and a chain of connections of the several tracts from Kiercereau's claim southward, making, however, some allowance for the lots of Louis Deshetres and Nicholas Marechal. The Parent lot No. 7 is also properly located by its north boundary and the possession of owners. It has also been demonstrated that the Laroche lot is surveyed where it was proven to have been so possessed and cultivated. Then between the south boundary of Faustin and the north boundary of Laroche there is a strip of three and a half arpents wide which has been allotted to the three *chains* of Lacroix, Barribeau, and Vasquez. According to the testimony given before Recorder Hunt and their confirmations by him, these three claims adjoin each other. The middle one is Barribeau's, bounded north by Vasquez and south by Lacroix; Lacroix, the southernmost, is bounded north by Barribeau. Vasquez is without a northern or southern limit, but its relative situation to the
193 two others is fixed by Barribeau's entry. We find no evidence of record showing how the said space of three and a half arpents which is precisely necessary for the location of the three claims was occupied prior to the change of government. The two arpents allowed by Baccane and Dodier in 1825 to Faustin adjoining Conde and their placing Laroche next to Faustin was clearly an error, for they gave Faustin more than his representatives

claimed and they removed Laroche two and a half arpents north of the ground which the old landmark and the long possession of himself and direct descendants prove him to have been the owner of.

On account of the deficiency of data before mentioned the location of the said three chains has been objected to. In answer to the objection it should be recollected that there have not been any transfers of those claims by which a call for boundaries would appear of record, because they have all remained in the possession of the original owners or their descendants who acquired title by inheritance until within a few years when they parted with their rights. But the fact that Vasquez, Barribeau, and Lacroix had their confirmations in this locality seems to be established, although, for the reasons stated, their connection with the adjoining claims does not so clearly appear of record as in most of the other common-field lots where transfers were made, for they have in their favor the long possession by their owners, their non-interference with any other confirmed lots, and also a natural object within one of them which seems to be most fitly placed to fix their several locations—I mean the spring known as the Barribeau spring. It flows on the Barribeau lot, and is on that account a strong evidence of its right location.

Hence it follows that if the Barribeau lot is properly surveyed its two neighbors, Vasquez and Lacroix, are also properly placed north and south of it. Barribeau, as stated, being the central lot, is
194 controlling the situation of the other two lots.

Lot No. 11. Louis Laroche.

It is bounded in the record by the lot formerly owned by Parent on the north and south by the lot formerly owned by Rondeau.

The north boundary—that is, Parent—has already been predicated upon in the remarks on the Faustin lot (of which Laroche is the south boundary) and the lots south thereof. We have in this case of Laroche an unbroken possession since 1774, when the inventory of the estate of Louis Briart Laroche was made after his death in 1773. In it there was the tract confirmed to his representatives in 1825, viz., 2 arpents bounded by Widow Parent and Rondeau. The records show how the tract was divided between Laroche's children and how they disposed of it. The northern arpent fell to John B. D. Belcour, who married Laroche's granddaughter. He lived on it a long time in a house erected by him some "thirty years ago" that is still standing, and the precise situation of which has been fixed by actual measurement. Belcour and his children parted with their land in 1849 and it is now held under them. The southern arpent was possessed in 1831 by the widow of Louis Dubreuil, a second daughter of Laroche, when she sold it to one Beaufits. This Beaufits sells the eastern half of it in 1832 to A. V. Bouis and reserves the right of access to the stone quarry "opened and worked" on the land sold. This quarry is "opened and worked" now on the said southern arpent of Laroche, and its position has also been fixed by actual measurement. It is true that it lies on the western half of the tract instead of being, as implied in the deed, on the eastern half—that is, on the part sold to Bouis; but this seems to be

accounted for by the fact that in 1832 there had been no actual survey of the southern Grand prairie and the parties in the instrument did not exactly know the eastern and western lines of the tract under convevance. Beaufits then remained in possession of
195 the western half of the southern Laroche arpent and bought from Bouis the western half of the adjoining 2 by 40 arpents to the south, making a tract of 60 arpents, which his widow inherited pursuant to marriage contract. She is now the wife of David Desislets, who is in possession of the sixty arpents. They are under fence and he lives on them. See his house on plat D of report of 1852. In his testimony of 14th December, 1853, Mr. Belcour stated that in 1825 the witness Dodier and Baccane showed him the foundations of an old house which they said had been built by Louis Laroche, and that said foundations were still to be seen in 1853. It will be perceived by the recent operations of Mr. Cozens that he identified and connected the remains of — Marie house at the same place; there are shown of Mr. Deward's plat of 1836, although Mr. Mosberger, who was on the ground on the 17th of this month to look for the said foundations of Laroche's house, makes the following remarks, viz: "Not being satisfied so far as to the identity of the Laroche house, I had a conversation with Mr. Belcour on the subject and from the result of it I am satisfied that the remains of what Messrs. Deward and Cozens represent to be of Alexis Marie's house are of the same house which, according to Belcour, had been built by Laroche."

The conversation alluded to took place not on the ground but in this office, and on that account Mr. Belcour may unintentionally have made a misstatement. It may be also that the foundations or the remains of Laroche's house have been removed since the time of Belcour's testimony or that they were not discovered on the ground by Mr. Mossberger. Moreover, Mr. Belcour states that the remains of Laroche's house are about seven or eight arpents east of Desislets' house. This would not agree with the distance between Desislets' house and Marie's remains, which is thirteen arpents; that is about double that given by Mr. Belcour. Could not the remains near the quarry, and which are about seven arpents east of Desislets' house, have been stated to be those of Bouis, when these are
196 really those of Laroche? For the statement of Mr. Desislets (and he is the only authority for the fact) that they are the ruins of Bouis' cabin is only a supposition; and even if Andre Vincent Bouis had occupied this house, could it not have been the old Laroche house? For he became the owner of a part of the southern arpent of Laroche. See pages 21 & 23, paper A, of Baccane's lot.

Next in order is the lot confirmed to Antoine Bouis' legal representatives by the act of 26th May, 1824, two by forty arpents, bounded north by the field lot formerly owned by Liberge, south by the field formerly owned by John B. Provenchere. This lot was not located by Mr. Cozens, but its survey has been applied for by David Desislets, Esqr., who is the owner and in possession of the western part thereof, this possession being the same as described in Laroche statement. From the documents filed with Desislets' ap-

plication and the data collected from other sources I am satisfied that the location of this lot of Bouis' embraces the unconfirmed lot No. 12 for Rondeau and the confirmed lot No. 13 for Baccane. From 1797 to 1806 the title was in Alexis Marie. In 1806 Marie sold to Pierre Choteau. In this deed the south boundary of Provenchere is introduced and continues in all subsequent deeds. In 1818 Pierre Chouteau sold to the heirs of Vincent Bouis. From this last year sales and purchases of the land executed by the Bouis family took place; they have been traced to 1834, the constant possession to this latter year since 1797 being deemed sufficient to establish the claimant's rights under the confirmation.

We will now examine the location.

The north boundary is Liberge. As is stated in the resume of this block of lots (which is paper No. 28 with this report), this Liberge seems to have been at best a temporary tenant of the Laroch tract; for in the deed of 1818 from Chouteau to Bouis and in the confirmation to said Bouis the north boundary is the lot
197 formerly owned by Liberge, so that in the former years Liberge had left the ownership of the Laroche lot, if indeed he had ever had any since Marie's inventory, in 1797, when the cultivation of the common field had already been abandoned for some years by the falling of the fence. There is not in the records any concession transfer to or from nor any call of a boundary in the name of Liberge or the alias Thibauet which could possibly find location here except in the conveyances of this Marie tract, and it will be observed in regard to these conveyances that even the heirs of Bouis preserved in them this same Liberge lot as their north boundary as far as 1834, while in 1831 & 1832 they had sold to the heirs of Laroche, their neighbors on the north, the half of the Marie tract, and bought from said heirs the eastern half of the southern arpent of Laroche, which was contiguous to their own land. The contiguity of the Laroche to the Marie or Bouis lot is then established by the respective possession of the heirs or representatives of the two confirmees under the said deeds of 1831 and 1832.

In regard to the location of the Marie tract itself we have, in addition to the possession thereof to this day, the following data, viz:

1st. In the deed of November, 1831, of Marianne Laroche to Beaufils for the southern arpent *if* Laroche the south boundary is Alexis Marie's tract under Rondeau and Baccane.

2nd. The affidavit of John B. D. Belcour. (See D in Desislets' application.) He states his acquaintance with Andre Vincent Bouis (the son of Vincent); the residence of Bouis as early as the year 1828 or 1829 upon a lot in the Grand prairie, bounded north by Laroche, and his cultivation thereof; Bouis' death on the said lot, in 1831 or 1832, and his (Belcour's) presence at said death.

3rd. The plat by De Ward of his survey, in 1836, of the Marie lot, and that of S. Philipson under Provenchere. It shows the
198 remains of Marie's house near the northern line of the lot.

4th. The identification of said remains of Marie's house, as shown by De Ward by recent operation under the direction of this office. See A in Baccane's statement.

5th. The deeds for the Marie and Bizet lots, showing their immediate vicinity; and,

6th. The testimony of Pierre Chouteau in the case of Bizet, which will be examined under its proper head.

Lot No. 12. Rondeau dit Alexander Langlois.

It is unconfirmed and does not appear to ever have been claimed by anybody, nor that any concession was ever had for it; neither that it was the subject of any transfer. Rondeau, it seems from Archive 278 (Baccane's case), was dead as early as 1779. The data in the foregoing case of Bouis show that the lot of Rondeau became the northern arpent of said Bouis confirmation; but how Marie obtained it cannot now be ascertained.

Lot No. 13. Representatives of Baccane.

This lot, as has been shown, is the southern arpent of Bouis' confirmation, though as shown there is no deed showing how Marie acquired the title thereto. The Baccane lot, as stated, originated in a grant in 1770. It was sold in 1779 and confirmed by the act of 29th April, 1816, confirmed again by the act of 26th May, 1824, and sold a second time in 1826. The boundaries are the same in the confirmations and in these deeds, so that all those documents apply to the same land.

The operation of Mr. Paul in 1825 for the purpose of fixing the south boundary of the lot of Baccane and the recent retracing of said operations under the directions of this office have already been detailed in another part of this report. By running again Mr. Paul's lines the late surveyors did not strike the south boundary of Baccane's lot as located by Cozens, but a point about $\frac{2}{3}$ of an
199 arpent southward of said boundary. This discrepancy may be accounted for by differences in measurement and in the variation of the compass at different times and by a slight change in the bearing of the east and west lines of the lots, which were run by Mr. Cozens parallel to the lines of the surveys north of Kiercereau, while the actual lines of the ancient lots, as they were cultivated, might have somewhat deviated therefrom. It will also be remarked that as Mr. Paul did not give the length of the lines he ran from the Marie and Rock springs to the south boundary of Baccane our retracing of the said lines cannot for this reason be depended upon with any certainty to establish the fact of the defectiveness of the present location for Baccane.

Lot No. 14. Guillaume Bizet or his legal representatives.

There is a concession of the 7th Feb'y, 1769, of one arpent, bounded on one side by Baccane and on the other by Kiery Desnoyers. It was confirmed to said Bizet or to his legal representatives by the act of 4th July, 1836.

The testimony in the transcript of the decision No. 286, under which number is was classed by the Commissioner, proves that after Guillaume Bizet's death his widow, Marie Papin, married Jean Baptiste Provenchere, who cultivated the tract for many years

before Mr. Delassus was Lieutenant Governor. In 1816 the said Marie Papin, widow, &c., and her son, Jean Louis, sold to Philipson and Labadie the lot of Bizet with the addition of the lot south thereof—that is, two arpents, bounded "north by a road of thirty-six feet, which separates it from and which Peter Chouteau acquired from Alexis Marie, and south by land whose owner is not known."

In 1818 Labadie sold his interest to Philipson. In this deed the same boundaries are given. This agrees perfectly with the calls for the sales of the Marie tract to Pierre Chouteau in 1806 and of Chouteau to Bouis in 1818, in which the south boundary of
200 Marie is Provenchere. There is also the testimony of Pierre Chouteau, given in 1835, which is very explicit, and should otherwise, on account of the affiant's character, be entitled to great weight. He states that John B. Provenchere upwards of forty years ago (1795) occupied and cultivated a tract of two arpents in the southern part of the Grand prairie, bounded on the north by a road thirty-six feet wide, which separates it from the land which deponent purchased of Alexis Marie, and that Provenchere continued to cultivate said tract as late as the year 18—. Mr. Chouteau then states that in the year 1818 he sold to the Widow Bouis and children two arpents by 40, being the land originally purchased by him from Alexis Marie, and that in said deed he described the arpents sold as bounded on the south by the land of said John Baptiste Provenchere, meaning the said two by forty arpents which he had said were cultivated and possessed for so many years by said John B. Provenchere.

I would, in fine, direct your attention to the survey by De Ward in 1836 of John Louis Provenchere (son of John B.) and the Marie possessions. It is in strict conformity with the deeds above mentioned, the confirmation to Bouis, the testimony of Mr. Chouteau, and the location by Cozens of the lots of Langlois and Baccane, covering the confirmation under Marie. The old road mentioned by Mr. Chouteau is also shown between the two lots at the eastern end. It is true Mr. De Ward's surveys extend further west than the present western line of the common field, and their western line seems to be a prolongation of the western line of the lots north — Mainville dit Deshetres; but it will be recollected that they were executed in 1836—that is, two or three years before the southern offset of the Grand prairie was made between Picart and Mainville in accordance with Duralde's surveys.

The southern lot added by Provenchere to the lot of Bizet appears to have been the unconfirmed lot of Corneau, which Mr.
201 Cozens has likewise located south of Bizet. Both in Cozens and De Ward plats the Corneau spring is shown. Mr. De Ward places it somewhat more northward, but nothing shows that he has, like Mr. Cozens, fixed its position by measurement.

Lot No. 16 for Berger, No. 17 for Petit, No. 18 for Liberge dit Thibeault, lot No. 19 for Henrion, and No. 21 for Dube, being unconfirmed, it is unnecessary to comment upon their locations.

As to the location of lot No. 20 (Pierre Lacroix's representatives), confirmed by the act of the 29th April, 1816, I have neither dis-

covered nor received any data that might be added to that furnished by Surveyor General Clark in his report of 1852, and inasmuch as that data seems not to be explicit enough to make apparent and clear the said location I do not feel warranted in approving it at present. Beside this uncertainty there is also the circumstances that, from all that can be learned, I am induced to believe the land is not claimed or possessed by any individual under Lacroix. It may be one of those old grants which Mr. Bates confirmed without being claimed by the owners or his heirs.

Lot No. 22. Joseph Saurin dit Larochette.

Two arpents, confirmed by a special act approved 2nd July, 1836. I have carefully re-examined this case and found nothing that would justify me in not concurring with Surveyor General Clarke's opinion thereon. He says in his report: "Relative to the lot surveyed by Mr. Cozens in the Cul-de-Sac (No. 22, for Joseph Saurin dit Larochelle), it is my opinion that this location should not be approved, since, as has been hereinbefore shown, it is misplaced and evidently at variance with the description in the confirmatory act of 2nd July, 1836."

I have not thought it necessary to use in this report the testimony taken by Mr. Cozens, and which is contained in document F of report of 19th August, 1852, because that testimony seems to
202 have been thoroughly analysed by Major Clarke and its merits or defects clearly pointed out.

I will also remark that when I have stated that the claimants of a confirmed lot are at present in the possession thereof I did not intend to say thereby that they are actually in the possession of the whole lot, because it may be that they hold a part of it only.

I have now completed this re-examination of Mr. Cozens' locations, according to your instructions of the 23rd August, 1853. I have also examined those instructions with the care which is required by the importance of the subject. After pointing out the laws of Congress governing the subject you lay down some principles to be followed for their application in the present cases.

As to collateral evidence, that is the evidence gathered from other sources than the data found in this and the office of the recorder of land titles. I have much examined and made use of the transfers to which the lots surveyed by Mr. Cozens have been subjected, because in my opinion they evidently afford the best information that can be had of their former ownership or possession. You say on this point: "Those laws look to the records (in surveyor general'- and recorder's offices) therein mentioned as the evidence to be consulted in locating and surveying those claims. I am not willing, however, to rule out all collateral evidence, but am clearly of opinion that such collateral evidence should not be permitted to overrule the records specified in those laws, but should only be received as illustrative or explanatory of them, and that, too, after full notice to and *having* of each and all whose interests may be affected by such evidence or whose rights may thereby in any way be drawn in question."

In relation to the locations by Mr. Cozens, in view of their conflicts with other private claims or school lands, you state as
203 follows: "If the whole question was between these claimants and the United States the utmost liberality might be extended to them, but where the rights of innocent individuals might be affected I would suggest that the clearest evidence be required of the correctness of each location before it is surveyed and approved, and then only after full notice to and hearing of all the parties in interest."

In the letter of 5th August, 1851, to Surveyor General Clarke relative to the field lot of Francis Dunegan in the common field of St. Louis, the location of which was like those of the field lots in the southern part of the Grand prairie, depending upon possession and cultivation only, Commissioner Butterfield set down the following general rule, to wit: "Before the surveyor general would be authorized in executing a survey for a confirmed claim he must have satisfactory evidence, fixing with reasonable certainty the particular parcel of land embraced by such claim."

I find also, in your letter of 9th October, 1852, relative to the surveys of the field lots of Coussat, Comparias, Conde, and Dunnegan, in the said common fields, after a recital of the laws confirming our private-land claims, the following exposition of them, viz:

"It could not have been the intention of Congress in passing either or all of the laws before mentioned to divest *bona fide* holders who at the change of government were inhabiting, cultivating, or possessing these lots, or to confirm the claims of others who had previously inhabited, cultivated, or possessed them and who had parted with their interest therein or abandoned them, nor can it be supposed that Congress intended to confirm all such claims without regard to their merits, and thus induce harassing and endless litigation, but simply to confirm the titles of those who inhabited, cultivated, and possessed such lots prior to and at the change of government."

204 This is sound doctrine, and the only rational interpretation that can be given of the meaning of the acts of 13th June, 1812, and 26th May, 1824. They confirmed field lots on possession and cultivation in 1803 regardless of former grants or concessions or their boundaries or record. If the grantees of record or their heirs had abandoned their land, these acts did not confirm it to them, but to him or them who occupied and cultivated it at the time provided for by said laws, as in the case of Calve, who had occupied and cultivated the lot granted to Hervieux, but which had become vacant after his death or deserted by his heirs, if he had any; neither can boundaries or record control occupancy or possession. For instance, Laroche's well-known possession cannot be invalidated for the following reasons, viz: Because the confirmation to Vincent Bouis places Liberge on Laroche's lot, and because the south boundary of the well-known possession of Parent is Laroche's lot.

Therefore in the course of this investigation I have never lost sight of this principle; hence it was the actual possession and cultivation of the claimant which I have endeavored to fix and deter-

mine, but at the same time paying due consideration to all the facts which have a bearing on them. I have not thought it necessary to examine into the New Madrid surveys and other claims which conflict with Cozens' surveys; for, their several locations being not questioned, I could only, for this reason, enter into an investigation of their rights viewed as adverse to those of the confirmations of field lots. This, as I conceive it, is beyond the province of this office, and properly belongs to the tribunals of the country.

I will, therefore, in consequence of the evidence presented in this report, in view of a proper application of the laws which
205 prescribe the duties of this office, and in accordance with what I conceive to be a proper compliance with the instructions before mentioned, proceed to act as follows on the locations by Wm. H. Cozens, in the southern part of the Grand Prairie common field, viz: Lot No. 1, for Conde's representatives, having been approved by Surveyor General Clarke as survey No. 1276, no action thereon is required of me.

Under the views expressed I will first prolong from the S. W. corner of said survey No. 1276, the western boundary of the Grand Prairie common field, southward to the south boundary of lot No. 14, for Bizet, so as to make it a straight line from the N. W. corner to Mainville's survey No. 1296, and then I will approve plat record and return to the recorder the surveys by Mr. Cozens of the following confirmed lots, to wit:

The lot No. 4. ½ arpent, for Francis Marechal, Senior, legal representatives.

Lot No. 6. 2 arpents, for Auguste Conde's representatives.

The lot No. 7. 1 arpent, for Francis Faustin dit Parent's legal representatives.

The lot No. 8. 1 arpent, for Benito Vasquez's legal representatives.

The lot No. 9. 1½ arpents, for Pierre Barribeau.

The lot No. 10. 1 arpent, for Louis Lacroix.

The lot No. 11. 2 arpents, for Louis Laroche's legal representatives.

The lot No. 13. 1 arpent, for Baptiste Riviere dit Baccane's legal representatives; and

The lot No. 14. 1 arpent, for Guillaume Bizet or his legal representatives.

This survey to be disposed of as a confirmation by the act of 4th July, 1836.

Moreover, I will have the claim of Vincent Bouis' representatives surveyed, platted, recorded, and returned to the recorder so
206 as to embrace lots No. 12 for Rondeau dit Langlois and No. 13 for Baccane, leaving the interference of Bouis with Baccane to be settled by courts of justice.

I will also correct the east and west lines of lots Nos. 12, 13, and 14, — as to make it a prolongation of the east and west lines of the lots north thereof when the latter of these lines is corrected as aforesaid, and, finally, I will have our plats amended so as to strike therefrom the following unconfirmed lots, to wit: No. 2 for Bequet, No. 3 for Deshetres, No. 5 for Moreau, No. 15 for Corneau, No. 16 for

Berger, No. 17 for Petit, No. 18 for Liberge, No. 19 for Henrion, and No. 21 for Dube, as well as the two confirmed lots No. 20 for Pierre Lacroix and No. 22 for Joseph Saurin dit Larochell, because, as stated, I am not satisfied of the correctness of the location for Lacroix, and that for Larochelle is evidently incorrect.

I herewith return all the papers which were sent back with your instructions of 23rd August, 1852. I must remark that two of them, the original report of Major Clare and its errata, have been missing for a long time, and for that reason I have been obliged to have a copy of the report made out and substituted therefor. It has been carefully collected with the record. As to the errata, a copy thereof would be useless, so it is omitted.

In conclusion, I would say, as an apology for the delay experienced in sending up this report, that it has proven a most laborious task to collect and verify the considerable amount of data necessary for its compilation; that the clerk upon whom this task devolved has been nearly daily taken from it to attend to other work, and that I was obliged to allow more time to the claimants or their agents to produce their arguments than was anticipated from the notice given them the 14th of September, 1853.

I am, very respectfully, sir, your obedient servant,

JOHN LOUGHBOROUGH,
Surveyor General.

207 To John Wilson, Esqr., Commissioner of the General Land Office, city of Washington.

Lot No. 14, Guillaume Bizet.—A grant of one arpent in 1769, bounded on one side by Baccane and the other by Kiery Desnoyers. The Baccane boundary is ascertained, but that of Desnoyers is not. Bizet died, and his widow married Jean Baptiste Provenchere. It was proven that Provenchere cultivated two arpents—that is, he added to the one arpent of Bizet the one arpent on which stands the Corneau spring. The records do not show that the latter arpent was either granted or confirmed to Corneau or sold by him to any one. The widow of J. B. Provenchere and her son, Jean Louis, sold, in 1816, to Philipson and Labadie their two arpents, bounded "north by a road of thirty-six feet, which separates it from the land which Peter Chouteau acquired of Alexis Marie, and south by land the owner of which is unknown."

In 1818 Labadie sold his interest to Philipson and described the same boundaries. The paper A in this case is the deposition of Peter Chouteau in 1835, a synopsis of which is already presented in the foregoing remarks on the location of Alexis Marie.

It will be sufficient here to repeat that Mr. Chouteau's testimony, in addition to the call in Vincent Bouis' confirmation for Provenchere, the above deeds to Philipson and Labadie and from Labadie to Philipson, and the deeds in the Marie case, absolutely prove that the lots of Marie and Bizet were coterminous, Marie being north of Bizet and Bizet south of Marie.

As to lot No. 4 of Francis Marechal, it has the following features:

208 1st. It is not satisfactorily connected with the northern block of surveys, beginning with Chancelier and extending south to survey No. 1276, for Conde's representatives.

2nd. But it appears to be connected with the southern block of locations (by way of Moreau's possessions), beginning with lot No. 6 and going southward to Bizet's lot No. 14.

3rd. That the lot is a part of the tract once owned by Nicholas Marechal, of whom Francis was a son.

4th. That the possession of Moreau, adjoining on the south Marechal's lot, is also a part of the lot of Nicholas Marechal, whose daughter, Catherine, Moreau married.

5th. That the possession of Moreau, one arpent, and the half arpent of Francis Marechal make together half an arpent less than the two-arpent tract of Nicholas Marechal.

6th. That on that account the half arpent of Francis Marechal does not take the location of any other claim derived from Nicholas Marechal's ownership; and—

7th. That the lot of Francis Marechal is now possessed under the title he vested in Antoine Smith in 1816.

Surveyor general's office, January 30th, 1855.

JNO. LOUGHBOROUGH,
Surveyor General.

"*History*," *a Document Returned by Wm. H. Cozens with the Field-Notes of His Surveys in the Grand Prairie and Cul-de-Sac Common Fields:*

"E," with surveyor general's report of 19th August, 1852.

History.

In my appointment as deputy the office issued the following notice:

209 To all persons interested in the confirmed unsurveyed private land claims in the Grand Prairie and Cul-de-Sac common fields:

SURVEYOR'S OFFICE, ST. LOUIS, *9th May*, 1846.

William H. Cozens, a deputy to the surveyor of the United States land for the district of Illinois and Missouri, has this day been instructed by me to survey and connect with the adjacent surveys the several confirmed land claims, below specified, in the Grand Prairie and Cul-de-Sac common fields in the vicinity of Saint Louis and in T. 45 N., R. 7 east, 5th principal meridian, viz:

Grand Prairie.

1st.	Baptiste Riviere dit Baccane	1 by 40	arpens.
2–.	Pierre Barribeau	1½ by 40	"
3–.	Francois Bissounette	¼ by 40	"
4–.	Auguste Chouteau, under Widow Bissonette	2 by 40	"
5–.	Samuel Bridge (same as J. B. Ortez)	2 by 40	"

6–. Auguste Condé ..... 2 by 40 arpens.
7–. Francois Faustin dit Parent ..... 1 by 40 "
8–. Jeannette, free negro woman ..... 1 by 40 "
9–. Pierre Lacroix ..... 2 by 40 "
10–. Louis Laroche ..... 1 by 40 "
11–. Jacob Lasablouiere ..... 1½ by 40 "
12–. Francois Marechal ..... ½ by 40 "
13–. Antoine Reynar ..... 1 by 40 "
14–. Claude Tinon ..... 1½ by 40 "
15–. Benito Vasquez ..... 1 by 40 "
16–. Louis Lacroix ..... 1 by 40 "
17–. Antoine Roy ..... 1 by 40 "
18–. Jean Baptiste Hervieux ..... 2 by 40 "
19–. William or Guillaume Bizet ..... 1 by 40 "

210 Cul-de-Sac.

20th. Joseph Louis dit Larochelle ..... 2 by 40 arpens.
21–. Jacques Noise dit Labes' legal representatives ..... 2 by 40 "
22–. Louis Ride or Ride's legal representatives ..... 1 by about 30 arpens.
23–. Antoine Marechal's legal representatives ..... 1 by 40 arpens.
24–. Joseph Vachard Senior's legal representatives ..... 1 by about 40 arpens.

Mr. Cozens is furnished with copies of and abstracts from such of the files and records of this office and that of the United States recorder of land titles as relates to the confirmations and localities of the several claims, but as a number of the tracts cannot be located by the data thus furnished I have to call on those interested for such additional evidence as may be in their power to produce.

The evidence must be in writing in order that it may be filed in this office for future reference. It should, if possible, consist of depositions taken on the ground as to the situation of original improvements and certified copies of extracts from the records of the office of the recorder of Saint Louis county, but any other written evidence will be received and filed which the owners may suppose will throw any light on the subject in question. Mr. Cozens will commence his operations on the ground on or about the 18th instant, when and where all who think proper can attend.

(Signed) F. R. CONWAY,
Surveyor General of the States of Illinois and Missouri.

Published in the Missouri Republican and Missourian newspapers from the 11th to the 18th of May, 1846.

But little additional information was given me by the
211 parties interested, as requested in the above notice.

In accordance with the above notice and after careful investigation of the "old archives," the "county records," depositions of witnesses which are herewith returned to this office, and

surveys and examinations on the filed, I have located several of the tracts committed to me and others besides these, of which several claims I here present a succinct history as follows, viz:

SAINT LOUIS, *November*, 1850.

W. H. Cozens, deputy United States surveyor for the district of Missouri.

No. 1.

Auguste Condé.

Concession to Auguste Condé by Saint Ange and Labuxiere, dated January 10th, 1770, for a lot 2 arpens in front by 40 arpens in depth, bounded on one side by lot of Senior Hevericux and on the other side by a lot of Louis Deshetres, situate in the Grand prairie of the village of Saint Louis, Livre Terrien No. 1, page 31.

This claim calls for Heverieux in the concession; calls for Heverieux in the sale to Labuxiere as follows:

Auguste Condé
to
Joseph Labuxiere.

August 1st, 1770.—Archive No. 104. Deed of exchange calls for one arpen by forty arpens, situate in the Grand prairie, bounded one side by Hevericux; the other side, Condé states that was conceded January 10th, 1770.

Joseph Labuxiere
to
Thomas and Charles S. Hempstead.

See Book G, page 354.—40 arpens in Grand prairie, near town of Saint Louis, bounded on one side by land formerly of Hervieux, on the other by land of Auguste Condé.

212 See also Record Book E, page 301, in the office of the United States recorder.

Francis Dunegan dit Beaurasier
to
John Mullanphy.

May 25th, 1805.—Recorded in Book A, pages 104. Calls for 1 arpen by 40 arpens in the Cul-de-Sac, bounded N. E. by Calvé, S. W. by Jacques Marechal, N. W. by domain, S. E. by common. Occupied it since 1786 to 1782.

He further states that he acquired this lot from Auguste Condé; but, after diligent examination of the records, I find no such conveyance.

This tract or lot has been surveyed to said Dunegan by L. M. Eiler on the 30th of April and the 1st and 3rd days of May, 1844.

It was proven before Hunt on the 29th of July, 1825, under the act of 1824. See Hunt's list No. 600. I find no concession to Dunegan for this claim.

Louis Lemonde, assignee of A. Condé, claiming one by forty arpents in the Big prairie, district of Saint Louis, produces before the board of commissioners a concession from St. Ange and Labuxiere, dated January 10th, 1770. The board grant to the legal representatives of Auguste Condé 40 arpents of land under the provisions of the 2nd section of act of Congress entitled An act respecting claims to land, passed 3rd March, 1807; to be surveyed conformably to possession. See commissioner's certificate No. 1276 issued November 13th, 1811, to Auguste Condé or his legal representatives, ten years' possession. See 2nd vol. U. S. Plate Papers, page 601. See Commissioner's Minute Book No. 5, page 399.

The boundaries as given by the record are Hervieux and Deshetres. Hervieux calls for Chancellier and Conde. Chancellier's calls for vacant land and Hervieux. Chancellier's tract is identified and surveyed. Hervieux should come immediately south, but Calve's tract for 2 arpens in width has been surveyed in its place.

There is no other concession or confirmation covering this space now allotted to Louis Lemonde.

213 Jacques Marechal.

There is a concession for a tract in that name in Livre Terrien No. 1, page 1, but without designation either of quantity or location. The proof in the above claim of Dunegan calls for this tract as its southern boundary; no proof found in Hunt's list, in Book R, page 320. Antoine Marechal, son and heir of Antoine Marechal and cousin of Toussaint Marechal, sells to Wm. McKee 1 arpen by 40 arpens in the Cul-de-Sac, bounded north by Calvé, east by common, south by Antoine Marechal, and west by Gratiot's League square, same as occupied and cultivated by Jacques Marechal.

The witnesses of 1825 and 1846 concur in locating this claim in this place. The record evidence place- it down in the Cul-de-Sac next south of Calve's tract, as surveyed by G. Brown.

Antoine Marechal.

This claim appears to be supported only by the calls in the sale of the Antoine Marechal tract, Book R, page 320, and by the fact that the Widow Marechal's tract, after providing for the Jacques Marechal tract, there is one arpen left for Antoine. In the confirmation or minutes by Hunt, see page 627, this claim calls for Jacques Marechal as being in the north, Gratiot's on the west, and vacant land on the south, and is made 1 arpen in width by forty arpens in depth.

Remarks by the Examining Clerk.

Deshetres.

Not so. The witnesses of 1825, Baptiste Riviere, states that this lot of Deshetres is south of Francois Marechal, p. 19. See also No. 4, immediately below No. 3—Deshetres.

Remarks of the Examining Clerk.

Francois Marechal.

Not so. See the discrepancy mentioned in the above lot
214 of Deshetres. See deposition, p. 20. Marli gives for N. by
Bequette A. Smith, and F. Noisé says it was Deshetres', and as to the south boundary Smith states it was Chas. Simoneau.

Widow Marechal.

Called for in Livre Terrien No 1, page 17, concession in 1768 to Joseph Calvé; boundaries, Widow Marechal and Little river, called for in Archive No. 24; in 1768, Widow Marechal and Little river, called for in Archive No. 42; in 1768, Widow Marechal and Little river, called for in Archive No. 98; in 1776, Widow Marechal and Barsaloux. This claim is beyond doubt the same as that covered by the claim of Jacques and Antoine Marechal in the Cul-de-Sac.

No. 2.

Francois Bequette.

No concession or confirmation or proof before the recorder where found. It is called for in the claim of Francois Marechal as its northern boundary. The witnesses of 1825 and 1846 agree in making this location. I have surveyed it one by forty arpens.

No. 3.

Louis Deshetres.

No concession or proof found. This claim is called for as adjoining on the south to the claim of Francois Marechal. The witnesses of 1825 and 1845 gives this claim a location here. Deshetre is called for as a boundary to Condé. See Livre Terrien No. 1, page 31 (surveyed one arpen in width).

No. 4.

Francis Marechal'-, Senior, legal representatives ½ arpent by about 40 arpens, proven before the recorder on the 28th of July, 1825. (See Hunt, N-. 594.) Grand Prairie common fields near the town of St. Louis, bounded south by the field lot formerly owned by Louis
Deshetre, east by vacant land, north by a lot formerly owned
215 by Francis Bequette, west by vacant land, supposed to be 1
by 40 arpens. The witnesses of 1825 and 1846 gives this location.

No. 5.

Francis Moreau.

No concession or confirmation of proof before the recorder. This lot is called for as adjoining on the north the claim of Auguste

Condé, located by the witnesses of 1825 and those of 1846 as north of Condé.

Called for in the sale of Conde's tract by Charles Sanguinette to John Mullanphy. See Book Q, page 227.

Calls for Conde in transfer by Moreau's heirs to Louis A. Benoist. See Book U, page 550, where they sell 1½ by 40 arpents in the Grand prairie, bounded north by vacant land which separates it from the lot of Antoine Marechal, south by a lot or tract of the representatives of Auguste Condé.

The call for Conde as its south boundary and the call in the sale of the Conde tract for this as its northern boundary and the concurrent testimony of witnesses make this location quite certain. (Surveyed only one arpen in width.)

Remarks by the Examining Clerk.

Not so. The concession here referring to is for 2 arpents in the common field north of St. Louis, "two arpents situated in the St. Louis prairie by 40 arpents depth, the said two arpents in front adjoining the enclosure of the common, and the directions of the said depth going towards the Grande prairie, in order that he may enjoy the same," &c. (This is the 2-arpent lot in common field north of St. Louis.)

The calls given here to said concession belong to the lot proven by the reps. of Condé before Mr. Hunt, p. 22.

Not so, as t-o witnesses, Noise and Smith, state that the south boundary of Condé is Pierre Barribeau, p. 23.

216 No. 6.

Auguste Condé.

Concession to Auguste Condé in Livre Terrien No. 1, page 2—2 by about 40 arpens—bounded south by the field lot formerly claimed by Parent, east by vacant land, north by the field lot claimed by Francis Moreau, and west by vacant land. Condé is called for here in sale by the heirs of Moreau's to Benoist. See Book U, page 550.

The witnesses of 1825 and 1846 agree in giving Condé this location. See Hunt's Minutes, Book No. 2, page 100. There are no transfers by Conde on record, nor is this tract mentioned in his inventory.

See remarks in the case of Condé in the preceding page.

No. 7.

Francois Faustin dit Parent.

No concession found. Witnesses of 1825 make this tract 2 by 40 arpens; confirmed 1 by 40 only. In the absence of all other testimony, save that of the witnesses, the confirmation is taken to govern for quantity. This claim was proven before Recorder Hunt on the 29th of July, 1825. See Hunt's Minutes, No. 601; bounded north by the field lot of Conde's representatives, east and west by vacant

lands, and south by claim of Louis Laroche. In 1774 called for in Archive No. 2326 as boundary of a tract owned by one Louis Laroche called for also in sale by sheriff of Charles Sanguinette land under Condé as the south boundary of the Condé tract. Book Q, page 227, dated September 7th, 1830. The witnesses of 1846 locate Barribeau's tract here, but they are clearly in error, for this claim calls for Benito Vasquez and Joseph Lacroix as boundaries. The witnesses of 1825 are beyond doubt correct, as they are supposed by the facts.

Finding the claimants of the Laroche tract in possession lower down in the series, I have, agreeably to my instructions, given
217 that claim a location elsewhere.

(Surveyed only one by forty arpens.)

Remarks of the Examining Clerk.

Not so as to confirmation. It was confirmed by the act of 29th April, 1816, as embraced in Mr. Bates' report of 2nd February, 1816, p. 26. Not so as to the silence of the witnesses of 1825 on this claim; for it is called for in the entry of the lot of Pierre Barribeau as being its northern boundary. See page 29.

No. 8.

Benito Vasquez.

No concession, confirmation, or proof before Hunt of this claim found called for as the north-rn boundary of the lot of Pierre Barribeau. The witnesses of 1825 do not mention this claim in their testimony. The witnesses of 1846 states that this claim was south of Pierre Barribeau, to whom they give but one arpent, and located him where I now locate Parent; so that they locate Vasquez on the same ground that I do, but with different boundaries.

(Surveyed but one arpen in width.)

No. 9.

Pierre Barribeau.

One and one-half arpents front by forty arpents in depth; proven on the 3rd of March, 1825 (see Hunt's No. 5); bounded north by a lot formerly belonging to Benito Vasquez, on the south by Joseph Lacroix. The witnesses of 1846 place this tract two arpens further north than I do, namely, upon the claim I have surveyed to Parent. The witnesses place here the claim of Liberge, which I have surveyed lower down, based upon record evidence.

(Surveyed one and one-half arpens in width.)

218 No. 10.

Joseph (Louis) Lacroix.

One by forty arpens, proven before Recorder Hunt on the 3rd of March, 1825; situate in the Big prairie; bounded on the north by Pierre Barribeau, south by Paul Lagraudeur, alias Guitard, and east

and west by vacant land. The claim of Pierre Barribeau calls for Joseph Lacroix at its southern boundary. I have surveyed this claim in the name of Joseph Lacroix instead of Louis, from the fact Lacroix, in proving up the possession and cultivation of the Barribeau claim, *he* signs himself Joseph, and also from the fact that we find nothing of record to show that in the olden time there was a Louis Lacroix in this district. I feel warranted in the belief that the tract in question was confirmed by Recorder Hunt to Louis Lacroix erroneously, and that it should have been confirmed in the name of Joseph Lacroix. I find no grant or concession to either Joseph or Louis Lacroix for the tract in question, nor do I find any conveyance to either of them. The location therefore rests upon the proof of occupation and cultivation as taken before Hunt.

(Surveyed one arpent in width.)

No. 11.

Louis Laroche.

No concession or confirmation found. Proof taken before Hunt on the 27th of July, 1825 (N. 592), Louis Laroche's legal representatives; 2 by 40 arpents; bounded south by the field lot claimed formerly by a man named Rondo, east by vacant land, north by a field lot owned formerly by Parent, and west by vacant land. The witnesses of 1825 place this claim two arpents south of Conde's tract. The witnesses of 1846 place it three arpents southward, and I have surveyed it 4½ arpents southward, as also from the fact the witnesses in 1846 accompanied me up the land and identified this very
219 tract as the one held and cultivated by Louis Laroche.

In Book R, page 355, Mariane Laroche, alias Dubreuil, sells to Jean Baptiste Beaufils one by forty arpens, bounded north by Louis Laroche and south Alexis Marie's tract under Rondeau and Baccane. If this transfer is relied upon it establishes, first, that Laroche had 2 by 40 arpens here; secondly, that Marian Laroche had a right to sell one of them, and, thirdly, that Rondeau's and Baccane's tract had been sold to Alexis Maries, and, fourthly, that the location here of Larocke's tract as north of Rondeau's and Baccane's is correct. In book S, page 42, Beaufils sells to A. V. Bouis the eastern half of the tract as bought above and bounds it north Louis Larozhe, south A. V. Bouis, conveys 1 by 20 arpens.

(Surveyed the Laroche tract 2 arpens in width.)

No. 12.

Rondeau, alias Alexander Langlois.

No concession, confirmation, or proof found; called for as the southern boundary of Louis Laroche's tract and as the northern boundary of the Riviere tract. See Livre Terrien N-. 1., page 1. Nothing to show quantity called for in sale by Baccane to Louis Robert in 1779, Archive No. 278; boundaries given are Corneau and Rondeau, called for in sale by Baptiste Riviere dit Baccane to A. H. Evans, recorded in Book M, page 492; boundaries given are

Corneau and Rondeau. In Book R, page 535, Marian Laroche, alias Dubreuil, sells to Jean Baptiste Beaufils one by forty arpens, and bounds it north Louis Laroche, south Alexis Marie, under Rondeau and Baccane. By this transfer it would appear that Alexis Marie acquired both this tract and that of Baptiste Riviere dit Baccane. In Book S, page 42, J. B. Beaufils sells to A. V. Bouis the east half of the tract bought as above of Mariane Laroche and bounds it north by Laroche and south A. V. Bouis by this transfer, it would appear that Maries' interest had passed to Bouis.
220 The witness- of 1825 and 1846 agree in giving this claim location here.
(Surveyed this claim one arpen in width.)

No. 13.

Baptiste Riviere dit Baccane.

A concession in January 10th, 1770, in Livre Terrien No. 1, p. 1, one by forty arpens; Rondeau and Martigny are made boundaries.

Riviere dit Baccané
to
Louis Robert.

In 1779, Archive No. 278, one by forty arpens; Corneau and Rondeau as boundaries. There are no transfers by Robert corresponding to this description, although by Archive No. 337 in 1778 an auction sale of one by forty arpens in the Grande prairie is sold to Charpentier without boundaries, and which in his inventory is described as bounded on one side by Louis Robert, Junior, and on the other heirs of Laroche.

Baptiste Riviere Baccané
to
Augustus H. Evans.

Record Book M, page 492, one by forty arpens, bounded north by Rondeau, south by Corneau. States that it was proven before the recorder in 1825 as the claim of Antoine Baccane's representatives. The witnesses of 1825 recognise this location.
(Surveyed this claim one arpent in width.)

No. 14.

William Bizet.

One arpen in width, conceded on the 1st of February, 1769, Livre Terrien No. 1, page 1, Cul-de-Sac, Big prairie, bounded by Baccane and Kiery Desnoyers. No confirmation by the old board or the recorder confirmed by act of Congress of the 4th of July, 1836, under decision No. 286. The witnesses of 1825 are silent in
221 relation to this claim. The witnesses of 1846 state Provenchere possessed and cultivated this tract as having acquired of Bizette. In 1769 called for in concession to Kiery Desnoyers,

Livre Terrien No. 1, page 26; bounded by Marchetan and Bizette. See Commissioners' minutes, book N-. 7, pages 166 & 167. The late board recommend that this claim ought to be confirmed.
See their minutes, Book No. 7, pages 180 & 181.

Paul Bizette
to
Jean Louis Provenchere.

August 20th, 1833, Book T, page 53. All the interest he may have in the estate of his deceased father, Charles Bizette.

Marie Bizette
to
Jean Louis Provenchere.

John Baptiste Boissy, son and heir of Louis Boissy, and daughter of Charles Bizette, deceased. August 20th, 1833, Book V, page 85. All his interest in the estate of Charles Bizette, deceased.

Remarks by the Examining Clerk.

Not so. The witnesses of 1825 (see Baccane's grant, p. 39) gives Corneau as the south boundary of Baccane as well as his grant (p. 35), but they do not state that the claim of Bizet intervenes between them, as Mr. Cozens located it.

Jean Louis Provenchere
to
Robert Forsyth.

January 15th, 1838, Book D, page 35. The undivided interest to 40 arpens of land, being the same 40 arpens of land confirmed to the heirs and legal representatives of Wm. Bizet. See Commissioners' minutes, Book No. 7, pages 166 & 167.

222	Mary Provenchere, sister of Louis and Jean Louis Provenchere, to Risdon H. Price to Horatio Cozens.	July 29th, 1816. Bounded north by land of Lacroix- south by land cultivated by Simoneau. The undivided half of this lot.

(Surveyed this claim as one arpent in width.)

No. 15.

Francis Corneau alias Hartigny.

No concession or confirmation found called for by the claim of Baptiste Riviere dit Baccane as a boundary. The witnesses of 1825 gives this a location south of Baccanes, as do also the witnesses of 1846, who accompanied on the ground and pointed out to me by its location. I have surveyed this claim one arpen in width.

No. 16.

Pierre Berger.

No concession found, no proof of possession and cultivation, except by Dodier and Riviere before Hunt on the — day of ——, 1825. They make this tract three arpents wider. This claim is called for as a boundary in several transfers of adjoining tracts.

Pierre Berger
to
Jean Bapt. Milhomme
to
Charles Faustin.

1778, Archive No. 230, boundaries Martigny and Petit, 2 by 40 arpens.
1779, Archive No. 280, boundaries Martigny and Lamy.

I have surveyed this claim only two arpens wide.

No. 17.

John Baptiste Petit, under Joseph Falladeau.

No concession, confirmation, or proof found of this claim.

223 Joseph Falladeau
to
Jean Baptiste Petit.

1775, Archive N-. 171, 2 by 40 arpens; calls for Corneau. This must pass over Berger to make Corneau a boundary.

1778, Archive No. 30, Berger; calls for Petit and Martigny, and in Archive 272, 1779, calls for Martigny and Lamy. From the inference is drawn that Petit sold to Lamy. This view of it is strengthened by the fact that Lamy is called for by Liberge in selling to Renand in 1779 by Archive No. 269. This claim is not regarded by the witnesses of 1825, but was designated to me in 1846 by Mr. Michel Marli, since deceased.

No. 18.

Francois Liberge alias Thibeault.

Francois Liberge
to
Antoine Reynal.

1779, Archive 269, 1 by 40 arpens, south of Grand prairie, bounded by Lamy and Kiery Desnoyers. Called for in Archive No. 89, in the conveyance by Henrion to Labrosse of 2 by 40 arpens in the Grande Prairie Cul-de-Sac; boundaries, Fes Thibault alias Liberge and Lacroix.

Called for in 1776 in concession to Pierre Lacroix, Livre Terrien No. 1, page 9, Big prairie, Dubde and Jean Rion (alias Henrion) the boundaries.

Louis Deshetre, by att'y,
to
Richard Ragsdale.

Conveys a tract of two by forty arpens, Cul-de-Sac of Grand Prairie; originally granted to Giles Henrion; one side, Thibeault; other side, Lacroix.

No. 19. Continued from page —.

Charles Henrion.

224 No concession, confirmation, or proof found on record located by evidence of transfers.

Charles Henrion
to
Joseph Labrasse.

Archive No. 269, 1779, 2 by 40 arpens, Grande Prairie Cul-de-Sac; bounded by Francis Thibeault (alias Liberge) and Lacroix. Called for in 1776 in concession to Pierre Lacroix. See Livre Terrien No. 1, page 9, Big prairie, Dube and Jean Rion.

Louis Deshetre, by attorney,
to
Richard Ragsdale.

Book T, No. 2, page 237; conveys a tract of 2 by 40 arpens in Cul-de-Sac of Grande prairie, originally granted to Giles Henrion; bounded, one side by Thibeault; other side, Lacroix.

This tract may be supposed, from the name, to be the same as concession in Livre Terrien No. 1, page 17, or the claim in the name of Cadet Jean Rion; but by reference to the boundaries, dates, transfers, &c., will show that the three are separate and distinct tracts.

The witnesses of 1825 and 1846 say nothing of this location.

No. 20.

Pierre Lacroix.

1776, conceded, Livre Terrien No. 1, page 9, to Pierre Lacroix, 2 arpens in the Big prairie; bounded, one side by Dube; other, Jean Rion. Confirmed by Recorder Bates to Lacroix's representatives.

1771, Archive No. 89. Called for in transfer made by Henrion to Labrasse; bounded, one side by Thibeault alias Liberge; other side, Lacroix.

1769, Archive No. 49. Called for, in sale of Dube to Langoumois, for a tract of 1 by 40 arpens; bounded, one side by Lacroix; other —.

No. 21.

Jos'h Dube to Langoumois.

225 Estate of Joseph Dube
to
Jean Bte. Langoumois.

1769, Archive No. 49, 1 by 40 arpens in the Grande prairie, Lacroix, and blank as boundaries in 1766 in concession to Pierre Lacroix; called for as a boundary Dube and Jean Rion.

No. 22.

Joseph Sorin dit Larochelle.

No concession found; confirmed by act of Congress; surveyed in accordance with my written instructions from the office of the surveyor general.

Joseph Sorin dit Larochelle
to
Gabriel Lachance.

Archive No. 656, 1795; bounded north by Camp, south by Yosty; acquired by adjudication March 7th, 1794. I can find no such adjudication among the records.

Gabriel Lachance
to
Sylvester Labbadie & Joseph Phillipson.

Book F, page 67; bounded north, Madame Camps; south, Yosty.

Sylvester Labbadie
to
Joseph Philipson — Book F, page 290; same boundaries given.
to
Simon Philipson. — Book U, page 233; same boundaries as above.

This claim is called for in Archive No. 506, dated 1799, wherein Honore sells to Yosty 2 by 40 arpens; bounded north, Jacques Labbe; south, Larochelle; that this boundary should be, south, Jacques Labbe, and, north, Larochelle will be fully seen by reference to the claims of Deschamps and Labbe, hereafter treated on.

226 NOTE.—The Widow Camp tract next north of this one being so located as not much to interfere with the other locations of this survey, and having been surveyed and approved, it is only necessary to refer to it as being north of the location assigned to Larochelle.

St. Louis, December 28th, 1850.

WM. H. COZENS,
U. S. Deputy Surveyor.

The foregoing history of the confirmed and unconfirmed claims in the Grande Prairie common fields, contained on pages 1st to 17, as surveyed by me under instructions from the surveyor general of the States of Illinois and Missouri, embrace all the tracts that could be located either on my said instructions from the evidence of the recorder or of living witnesses.

Many claims, I am satisfied, should be located elsewhere than on the ground covered by the said instructions. I was prohibited from so doing by my written instructions, as alluded to above.

The said claims being known by the names as follows:

Francois Bissonnette	1 by 40	arpents.
Auguste Chouteau under Widow Bissonnette	2 by 40	"
Samuel Bridge (same as I. B. Ortez)	2 by 40	"
Jeannette, a free negro woman	1 by 40	"
Louis Laroche	1 by 40	"
Jacob Lasablouiere	1½ by 40	"
Antoine Reynar	1 by 40	"
Claude Tinon	1½ by 40	"
Antoine Roy	1 by 40	"
Jean Baptiste Hervieux	2 by 40	"

This claim should cover the same ground surveyed in the name of Joseph Calve.

Jacques Labbe dit Noise's legal rep's	2 by	40 arpents.
Joseph Ride or Ride's legal representatives	1 by about	30 arpents.
227 Antoine Marechal's legal representatives	1 by	40 arpents.

These three last claims I have surveyed in the Cul-de-Sac as now recognized, but not contained in this report, and the claim of Joseph Vachard Senior's legal rep's, 1 by about 40 arpents.

St. Louis, Mo., March 24th, 1851.

W. H. COZENS,
U. S. Dep'y Surveyor.

M. L. Clarke, Esqr., surveyor of Illinois & Missouri.

SIR: Under my contract and instructions from Mr. F. R. Conway, late surveyor general, I was instructed to survey the claims in Grande Prairie common field, most of which I have executed and returned to your office. I was instructed not to survey any claim north of the survey in said Grand prairie in the name of Joseph Calve, there being one tract of 2 by 40 arpents confirmed to A. Chouteau under the widow of Louis Bissonnette, for which I could not find any evidence by persons or papers to show either cultivation or possession by Bissonnette or his legal representatives or of A. Chouteau under him to any lands south of the Calve survey, but, on the contrary, found plenty of evidence to have located and surveyed the claim north of the Chancelliers claim as surveyed and south of the survey in the name of Chouteau under Routier, which

precisely corresponds with the words in the confirmation, that the land claimed before Bates, the U. S. recorder of land titles, "extended to the Big swamp." This location is in accordance with the statements of old persons upon the ground about the possession and cultivation of Louis Bissonnette, his widow and children after his death, from all the evidence and circumstances which came to my knowledge about the claim in the name of A. Chouteau under
228 the widow of Louis Bissonnet of 2 by 40 arpens in Grande Prairie common field. I am of opinion that the claim should be surveyed on the land between the claims of Chancelliers and Chouteaus under Routier extending west to the Big swamp.

St. Louis, March 26th, 1851.

WM. H. COZENS,
U. S. Dep'y Surveyor.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November 24th*, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy is a true and literal exemplification of a manuscript document on file in this office, known as the "History of the Cozens Survey," relative to surveys of private claims for lands now within the limits of the city of St. Louis, Mo.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 25th*, 1879.

I, J. A. Williamson, Commissioner of the General Land
229 Office, do hereby certify that the annexed tracing of the plat of private surveys Nos. 1276, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1813, 1814, 3340, and 1815, known as "Cozens' surveys," in the Grande Prairie common field of St. Louis, in township 45 north, range 7 east, and showing the interferences of said surveys with other claims, is a true and literal exemplification of the original of record in this office, authenticated by John Loughborough, surveyor general of Illinois and Missouri, as appears by his certificate thereon dated St. Louis, 26th February, 1858.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. A. WILLIAMSON,
Commissioner of General Land Office.

(Here follows diagram marked p. 229a.)

230 *Entry of* 480 *Acres, under Cert.* 161, *for R. Easton.*

Rufus Easton, as the legal representative of Joseph Hunot, enters four hundred and eighty acres of land by virtue of a certificate No. 161, dated August 12th, 1816, issued by Fred. K. Bates, Esq., recorder of land titles, to wit, that part of fractional section seventeen, in township forty-five north and range seven east (the township in which St. Louis is situate), lying north of the Cul-de-Sac fields; fractional section eighteen, in the same township, and so — off on the east side of the unappropriated part of fractional section eight of the same township as will make the quantity.

St. Louis, June 16th, 1818.

JOSEPH C. BROWN,
For RUFUS EASTON.

Patent Cert. No. 404, *in Favor of J. Hunot, &c.*

No. 404. Office of the recorder of land titles.

ST. LOUIS, MISSOURI, *February 2nd*, 1833.

I certify that in pursuance of the act of Congress passed the 17th day of February, 1815, a location certificate, No. 161, issued from this office in favor of Joseph Hunot or his legal representatives for any quantity not exceeding six hundred and forty acres of land, that a location has been made, as appears by the plat of survey herewith, and that the said Joseph Hunot or his legal representatives is entitled to a patent for the said tract, containing, according to said location and survey No. 2500, four hundred and eighty acres, being in township No. 45 north of the base line, range No. 7 east of the 5th principal meridian.

F. R. CONWAY,
Recorder of Land Titles in the State of Missouri.

231 *Letter from Com'r Gen'l Land Office to W. H. Ashley, Feb.* 8, 1834.

GENERAL LAND OFFICE, *8th Feb.*, 1834.

The Hon. Wm. H. Ashley, Reps.:

SIR: I return the letter of Mr. Lindell, referred by you to this office, requesting a patent for the New Madrid claim of Joseph Hunot, in township 45 north of range 7 east, location certificate No. 161, and patent certificate No. 404, and have to state that by letters of 11th March, 1823, from Charles S. Hempstead, and of 9th August, 1825, from Henry Chouteau and others, it appears that this claim has been located upon several unconfirmed Spanish claims, and, therefore, upon lands not liable to location under the New Madrid law of 1815. Under these circumstances a patent cannot be granted for the New Madrid location.

With, &c., ELIJAH HAYWARD.

Letter from J. Phillipson to Com'r Gen'l Land Office, July 15, 1841.

ST. LOUIS, 15*th July*, 1841.

To the Commissioner of the U. S. General Land Office:

SIR: The undersigned, as executor and trustee of the last will and testament of Simon Philipson, late of St. Louis, deceased, is now vested with the legal estate upon the trusts in said will expressed, of two tracts of land, containing two arpents front and forty arpents, French measure, in depth each; the one of which tracts is situated in what is called the Cul-de-Sac common fields, near St. Louis, and the other in the Grande Prairie common fields, near St. Louis aforesaid. Said two tracts are now adversely held and occupied by one Peter Lindell, who claims the same under color of two New Madrid locations—the one made by one Rufus Easton, under Joseph Hunot, in 1818, of 480 acres north of the Cul-de-Sac fields; the other made by Mathew McGirk and Taylor Berry, under James Conway, of two hundred arpents. The number of the New Madrid certificate to Hunot is 161, and of that to James Conway is 348.

It is manifest on the face of the two surveys made of each of those New Madrid locations that the terms of each location are
232 disregarded, and that the land actually surveyed is excluded by those terms; besides it is also manifest that the locations of those two New Madrid certificates were made upon land not authorized to be sold, and therefore void. For this conclusion the Commissioner of the General Land Office is referred to the opinion of the Attorney-Generals of the United States, from those of Mr. Wirt, inclusive, down to the opinion of Mr. Attorney General Gilpin on the subject of locations.

The undersigned therefore requests that if any application be made for a patent based on either of said locations, the same may be not issued until the final decision (at least) of certain suits of ejectments which the undersigned feels it his duty to institute against said Lindell and every other person who claims or shall claim under or by virtue of said New Madrid locations.

This application is made to prevent the necessity of any proceeding hereafter for the purpose of annulling said patent or patents if they should be issued to said Lindell or others by the executive of the United States.

Very respectfully, JOSEPH PHILIPSON.

Letter from Sur. Gen'l to Com'r Gen'l Land Office Aug. 9, '52.

Office of the surveyor general.

ST. LOUIS, *August 9th*, 1852.

SIR: In compliance with your request of the 29th ult., I herewith transmit a statement of the locations in the list of the Honor-

able R. M. Young of the 21st ult., a copy of which was transmitted with your said letter of the 29th.

I am, very respectfully, sir, your obedient servant,

M. LEWIS CLARK,
Surveyor General.

233 To the Commissioner of the General Land Office, at Washington city.

Statement of Locations & Surveys under New Madrid Certificate.

Statement relative to the following-designated locations certificates under the New Madrid act of the 17th Feb., 1815, made in pursuance of the instructions of the Commissioner of the General Land Office to the surveyor general at St. Louis of the 29th July, 1852.

All in township 45 N., R. 7 E., 5th P. M.

Certificate No. 19, 160 acres, for Joseph Genereux, located 12th Dec., 1817, to eastward of and adjoining to the eastern boundary of the location made for Francis Delisle (certificate No. 16) and to adjoin the southern boundary of the common-field lots of Grande prairie; survey executed 23rd June, 1819, and numbered 2692. Part of this location lies on surveys of lots in the Grande Prairie common field executed since. The southern boundary of survey No. 3304 was also the southern boundary of said common field as run by Joseph C. Brown in 1818.

NOTE.—The plat of T. 45 N., R. 7 E., in the General Land Office shows no lot south of survey No. 3285 for Dumgand. There are south of A 21 lots of the Grande prairie lately surveyed by Wm. H. Cozens, under the direction of the former surveyor general. A report on these 21 lots is now being prepared and will be transmitted in a few days to the General Land Office.

Certificate No. 16, 200 arpents, for Francis Delisle, located 12th December, 1817; amendment of location without data, but must have been between the 29th July and 3rd of August, 1818; survey No. 2620. It is outside of any common field, but adjoined the old western and southern boundaries of the Grande prairie run by Joseph C. Brown in 1818.

234 Certificate No. 103, 160 acres, for Eustache Peltier, located Oct. 24th, 1816, survey No. 2472. It lies outside of any common field. Certificate No. 150, located June 16th, 1818, for James Y. Ocarroll, by "Christian Wilt, as the legal representative of James Y. Ocarroll, enters six hundred and forty acres of land by virtue of certificate No. 150, dated Nov. 30th, 1815, issued by Frederick Bates, Esq., recorder of land titles, to wit: Fractional section twenty, in township forty-five north and range seven east, the same in which St. Louis is situated; that part of fractional section seventeen in the same township which lies south of the Cul-de-Sac fields; the western half of fractional section twenty-one in the same township, and so

much off from the north side of the western half of fractional section twenty-eight in the same township as will make the quantity;" survey No. 2498. It interferes with the survey of the commons of St. Louis, and to a small extent with the survey of the Barriere des Noyers lots. This last interference has been ascertained of late, and is not shown on the plat in the General Land Office.

Certificate No. 159, 160 acres, for J. Smith, located November 1st, 1816; survey No. 2491. It lies outside of any common field.

Certificate No. 161, 480 acres, for Joseph Hunot, located June 16th, 1818, so as to include that part of fractional section 17, in township 45 north, range 7 east, north of the Cul-de-Sac field; fractional section 18, and so much off the east side of the unappropriated part of fractional section 8 as will make the quantity; surveyed June 23rd, 1819, and numbered 2500. It interferes with the recent surveys by Cozens in the southern part of the Grande Prairie common field, and also with his survey for Larochelle in the Cul-de-Sac.

Certificate No. 145, 640 acres, for Martin Coontz, located
235 29th May, 1818, to include "that part of frac'l section 10 and 15 which is not embraced by other private claims, and so much off from the east side of frac'l section 9 as will make the quantity of 640 acres;" survey No. 2499, executed in July, 1818. It interferes with the old and new surveys of the Grande Prairie common field.

Certificate No. 348, 200 arpents, for James Conway, located June 16th, 1818, to wit: So much of frac'l section 9 as is not embraced by the location of Martin Coontz, so much of the southeast quarter of section 8 as is not embraced by prior locations, and so much off on the north side of the N. E. quarter of frac'l section 17 as will make the quantity; survey No. 2712, surveyed by Jos. C. Brown, June 23rd, 1819. It is altogether included within the new surveys in the Grande prairie by Cozens.

Office of the surveyor general.

ST. LOUIS, *August 9th*, 1852.

I certify that the foregoing is extracted from the records and documents on file in this office.

M. LEWIS CLARK,
Surveyor General.

Letter from Sur. Gen'l Loughborough to Com'r Gen'l of Land Office, Oct. 14, '57.

Mailed Oct. 24.

Office of the surveyor general.

ST. LOUIS, *Oct. 14th*, 1857.

SIR: I have received your letter of the 24th ult., in which I am requested to make a thorough examination of the location of Jos. Hunot of 480 acres in T. 45 N., R. 7 E., of the 5th p'l M., under New Madrid certificate No. 161, and a full report touching that location

and all adverse claims. With the letter were copies of the two communications from Alton Long, Esq., one dated the 17th
236 Nov., 1855, to the land officers at St. Louis, containing his protest against their declining to permit him to enter the land covered by the said location; and the other, dated the 19th of same month, to the Commissioner of the General Land Office, in which Mr. Long stated his case and asked for the annulment of the Hunot survey.

Jos. Hunot, Jr., had a permission, dated the 20th June, 1802, from Francis Lesiur, commandant of the post of Little prairie, to settle on the vacant land of that post. Under this he presented a claim for 800 arpents to the old board, which rejected it; but the same was confirmed to the extent of 640 acres by the 2nd section of the act of the 29th April, 1816. Book A, p. 275, Board's Minutes; Book 5, p. 105; Bates' Decisions, p. 13, in recorder's office; St. Pap., vol. 3, p. 313.

On the 12th August, 1816, Jos. Hunot, availing himself of the benefit of the act of 17th Feb'y, 1815, furnished evidence of the injury to his land by earthquakes. Following this testimony is a note in the handwriting of Recorder Bates—*i. e.*, "R. Easton claims this tract with the right of location." It was relinquished under the act by "Rufus Easton's legal representatives." Recorder Bates on the same day granted certificate of new location, No. 161, with this remark: "Certificate dated August 12th, 1816, for 480 acres, which, together with certificate No. 37 for 160 acres, makes 640 acres the limitation." (Delivered.) R. Easton.

Certificate No. 37 is for a lot of 1 arpent in New Madrid, confirmed by the act of 29th April, 1816, but relinquished on account of damages by earthquakes.

A copy of certificate (letter A) No. 161 accompanying this report; a location of it (copy B) was made on the 4th of Nov., 1816. It is signed Rufus Easton, assignee, agent and attorney of
237 claimant.

Paper C is a copy of the regulations prescribed to New Madrid claimants by Surveyor General Rector for the reception at this office of their locations. They require the producing of the certificate by the recorder with its location.

From a note written on Easton's location it appears that it was received with certificate No. 161 by the surveyor general on 14th Nov., 1816. But no survey was made, for, as endorsed on its back, the location was "withdrawn in consequence of indefinite calls and interferences."

A relocation was made on the 16th June, 1818 (paper D) by "Jos. C. Brown for Rufus Easton" as the legal representative of Jos. Hunot, to wit, that part of fractional section 17 lying north of the Cul-de-Sac fields; fractional section 18 and so much off on the east side of the unappropriated part of fractional section 8 of the same township as will make the quantity in T. 45 N., R. 7 E., of the 5th p'l M. This is the location under consideration.

It was surveyed on the 23rd June, 1819, by Jos. C. Brown under his contract of 31st March, 1817. The survey was platted and de-

scribed as No. 2500 in Book A, pages 84 and 85 (copy E), and return of it made the 8th Jan'y, 1833, to the recorder, who, on the 2nd of February of same year, issued patent certificate No. 404 and delivered it to Peter Lindell, Esq., of this city. The survey is stated to contain 480 acres, the quantity granted.

There are represented on diagram F, survey No. 2500 of the Hunot location, the areas of the several tracts it takes up, and all the claims conflicting with the survey. Survey No. 2500 conforms to the location as to fractional section 17 and 18. In regard to fractional section 8, the location calls for only so much off on the east side of the unappropriated part of the section as will with the
238 other tracts make the quantity of 480 acres, whilst the survey includes the whole of the section. It embraces also fractional section 7 (21.12 acres) not mentioned in the location.

The separate contents of the four tracts show an aggregate area of 485.88 acres. Inasmuch as other locations are on section 8, it is thought proper to compare their dates with that of Hunot's, made the 16th June, 1816. They are as follows:

Francis Delisle, certificate No. 16; location on the 29th July or 3rd August, 1818, or on any of the intermediate days.

Joseph Genereux, certificate No. 19; location 12th December, 1817.

James Conway, certificate No. 348; location 16th June, 1818.

The claims conflicting with the survey for Hunot are the following lots of the Grande Prairie common field, which have been confirmed, with one exception, upon possession and cultivation, prior to the 20th Dec'r, 1803. The confirmation of the case excepted (Bizet) is founded upon Spanish grant, to wit:

By act of 29th April, 1816.

Survey No. 1662, Benito Vasquez's representatives.
Survey No. 1815, Pierre Lacroix's representatives.
Survey No. 1814, Baptiste Riviere's representatives.

By acts of 13th June, 1812, and 26 May, 1824.

Survey No. 1663, Pierre Barrideau.
Survey No. 1664, Louis Lacroix.
Survey No. 1665, Louis Laroche's representatives.
Survey No. 1813, Vincent Bouis' representatives.
Survey No. 1814, Baptiste Riviere dit Bacane's representatives. (See above.)

Act of 4th July, 1836.

Survey No. 3340, Guillaume Bizet or his legal representatives.

These surveys were approved by your decision of the 27th Nov., 1856, which, being appealed from, was affirmed by Secretary McClelland on the 2nd March, 1857.

239 In your letter of the 24th ult. I am referred to mine of the 5th Feb'y, 1856, respecting the appeal of Mr. Lindell against

survey 1815, of Pierre Lacroix'- lot of 2 arps., one of the above interfering claims. In this case Messrs. Bates and Hill, the attorneys for Mr. Lindell, filed an argument, which was subsequently withdrawn and the appeal dismissed, — consequence, as I understand, of a compromise between Mr. Lindell and the heirs or representatives of Lacroix.

I am very respectfully your ob't servant,

JNO. LOUGHBOROUGH,
Surveyor General.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *August 7th*, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a copy of location certificate 161, dated St. Louis, August 12th, 1816, issued by Frederick Bates, recorder, in favor of Joseph Hunot or his legal representatives; also of a notice, dated 4th November, 1816, signed Rufus Easton, assignee, agent, and attorney of the claimant, to William Rector, Esquire, surveyor general of the United States for the Territories of Missouri and Illinois; also of the entry of 480 acres of land, dated St. Louis, June 16, 1818, of Joseph C. Brown for Rufus Easton, by virtue of a certificate, No. 161; also of patent certificate No. 404, dated St. Louis, Missouri, February 2nd, 1833, issued by F. R. Conway, recorder of land titles in the State of Missouri, in favor of Joseph Hunot or his legal representatives, upon survey 2500, in township 45 north, of range 7 east, of the 5th principal meridian, Missouri; also of letter dated 8th February, 1834, from Com-
240 missioner of General Land Office to Honorable Wm. H. Ashley; also of a letter, dated St. Louis, 15th July, 1841, from Joseph Philipson to the Commissioner of the General Land Office; also of a letter, dated St. Louis, August 9th, 1852, from M. Lewis Clark, surveyor general, to the Commissioner of the General Land Office, and of statement referred to in Mr. Clark's letter; also of a letter, dated St. Louis, October 14th, 1857, from John Loughborough, surveyor general, to Commissioner of General Land Office, are true and literal exemplifications from the records and files of this office

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

Letter from A. Renard, Recorder, to Com. Gen'l Land Office, Feb. 18, '59.

RECORDER'S OFFICE, ST. LOUIS, 18*th February*, 1859.

SIR: I herewith transmit, 1st, a plat and transcript of survey No. 2500, in t'p 45 N., R. 7 E., 5th p'l mrd. of the location under New Madrid certificate No. 161, granted to Joseph Hunot or his legal

representatives for 480 acres. The document was returned on the 5th instant by the surveyor general with a copy of your instructions of the 26th August, 1858.

2nd. Patent certificate No. 492, issued for survey No. 2500 in conformity with the above instructions.

241 3rd. The abstract of certificate No. 492. The necessary annotations to show that certificate No. 404, which had been formerly issued for survey No. 2500, is superseded by certificate No. 492 are made in the books.

Messrs. Ed. Bates and Peter Lindell, of this city, claim the patent.

I am very respectfully, sir, your obedient servant,

ADOLPH RENARD, *Recorder.*

Thomas A. Hendricks, Esq., Commissioner of the General Land Office, city of Washington.

Pat. Cert. No. 492, *Feb.* 18, '59, *Favor of Jos. Hunot.*

OFFICE OF THE RECORDER OF LAND TITLES,
ST. LOUIS, 18*th February*, 1859.

Patent certificate No. 492.

It is hereby certified that from the records of this office it appears that on the 8th January, 1833, Elias T. Langham, surveyor of the public lands in the States of Illinois and Missouri, returned according to law to Frederick R. Conway, recorder of land titles in the State of Missouri, an approved plat and transcript of survey No. 2500, executed on the 23rd June, 1819, of the location made in township 45 north, of the base line, and range 7 east, of the 5th principal meridian, under certificate numbered 161, which had been granted to Joseph Hunot or his legal representatives for four hundred and eighty acres of land on the 12th August, 1816, pursuant to the provisions of the second section of the act of Congress passed the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who
242 suffered by earthquakes," and that the said recorder on the 2nd February, 1833, issued his patent certificate numbered 401 on said survey No. 2500 for the said 480 acres; and it is further certified that it appears from the accompanying plat and transcript of survey No. 2500, approved on the 22nd January, 1859, and transmitted on the 5th February, 1859, by John Loughborough, surveyor general for the States of Illinois and Missouri, in compliance with the instructions of the Commissioner of the General Land Office, dated the 26th August, 1858 (a copy of which is furnished this office for its government), that the said survey No. 2500 has since the issuance of said certificate No. 404 been in part interfered with by the following surveys of other claims, to wit: Survey No. 1663, for Pierre Barribeau; survey No. 1664, for Pierre Lacroix; survey No. 1665, for the legal representatives of Louis Laroche; survey No. 1813, for the legal representatives of Vincent Bouis under Pierre Chouteau, all of which claims were confirmed by the act of Con-

gress approved the 13th June, 1812, entitled "An act making further provisions for settling the claims to land in the territory of Missouri," and the supplementary act of 26 May, 1824; survey No. 1814, for Baptiste Riviere dit Bacanne or legal representatives, confirmed by the said acts of 1812 and 1824, and also by the act of Congress approved the 29th April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the Territory of Missouri;" survey No. 1815, for the representative of Peter Lacroix, confirmed by the said act of 1816, and survey No. 3340, for Guillaume Bizet or his legal representatives, confirmed by the act of Congress approved the 4th of July, 1836, entitled "An act confirming claims to land in the State of Missouri, and for other purposes."

Now, therefore, be it known that Joseph Hunot or his legal representatives is entitled to receive a patent for the aforesaid
243 survey No. 2500. Saving and excepting clause is not intended to preclude the said Hunot or his legal representatives from seeking a judicial settlement of his or their rights, if any exist, to said interferences.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

To the Commissioner of the General Land Office, city of Washington.

(Recorded at pages 63 & 64 of book of patent certificates.)

Relinquis-ment to U. S. by R. Easton, Nov. 1st, 1816.

Know all men by these presents that I, Rufus Easton, of the town of St. Louis, in the Missouri Territory, as assignee of the following-named persons and for and in consideration of the privilege of locating other lands in lieu of the tracts of land hereinafter generally described according to the provisions of the act of Congress of the 17th February, 1815, which tracts of land have been conveyed to me, do grant, remise, release, and relinquish to the United States all my right and title to the said several tracts of land and lots of ground, to wit: A lot of one arpent in the town of New Madrid, in the county of New Madrid and territory aforesaid, and a lot of two arpents in the village of the Little prairie, in the county of New Madrid aforesaid, the former granted to James Smith, the latter to J. Smith; also a tract of six hundred and forty acres of land situate at the Portage Bay of St. Francis, in the said county of New Madrid, granted to Joseph Hunot; to have and to hold the said several lots and tract of land above described unto the said United States, their successors and assigns, forever.

Witness my hand and seal the first day of November, 1816.

RUFUS EASTON. [SEAL.]

244 Signed, sealed, and delivered in presence of—

B. S. BULFINCH.
ROBT McCLOUD.

MISSOURI TERRITORY, } ss:
St. Louis County, }

Personally came before me the undersigned, one of the justices of the peace for the county of St. Louis, in the Territory aforesaid, Rufus Easton, within named, and acknowledged the within conveyance to be his voluntary act and deed for the purposes therein mentioned. This 11th day of November, 1816.

JOSEPH CHARLESS, *J P.* [SEAL.]

Letter from Peter Lindell to Com. Gen'l Land Office, Mar. 12, 1833.

ST. LOUIS, 12*th March*, 1833.

SIR: Enclosed I transmit to you a copy of survey No. 2500 and certificate of the surveyor of public lands for the States of Missouri and Illinois; also the final or patent certificate No. 404 of the recorder of land titles in the State of Missouri for four hundred and eighty acres of land laying in the latter State, on which you will please issue the patent in conformity with said document and forward it to me per mail with as little delay as may be consistant with your convenience and the business of your office. The person in whose name the original certificate and location was made is believed to be dead. You will therefore please issue the patent to his legal representatives or in such other form as you may have adopted in such cases.

Very respectfully, your ob't servant,

PETER LINDELL.

245 *Letter Sur. Gen'l Loughborough to Com. Gen'l Land Office, June* 23, 1858.

ST. LOUIS, *June* 23*rd*, 1858.

DEAR SIR: In the multitude of matter- occupying my attention whilst at Washington was the case of the Hunot survey in the Grande Prairie common field of St. Louis, being survey No. 2500, New Madrid certificate No. 161. My recollection is that you were to have me instructed to advertise the case in such a form as would notify all the parties in interest, so that the evidence *pro* and *con* might be filed with arguments so as to enable your office to determine whether a patent ought to issue or not. I am not sure that my memory is accurate, but this is the impression left on my mind.

I will be obliged, if you can recall the matter to memory, if you will cause the proper instructions to be forwarded to me. I think, unless there are adverse claimants who can show a good title, it will be well to issue a patent, as the survey is an old one, but, of course, this cannot be done until we have all the evidence. The property is very valuable, and it is very desirable to have the matter disposed of. It is a thing of too great moment for me to assume to act in the absence of instructions. I have not examined the case very recently, but my impression is favorable to the title of Mr.

Lindell, the reps. of Hunt; at least to that portion not covered by confirmation survey. I am not aware that there are any other confirmation claims than those already surveyed which would interfere with it, but if there are they will no doubt be brough f'rw'd upon advertisement.

We have no news of any interest. Our campaign is just beginning. I am afraid we cannot defeat Blair, but we will give him a hard race.

Yours truly, JCHN LOUGHBOROUGH.

246 *Letter of Com. Gen'l Land Office to J. Loughborough, Aug.* 25, 1858.

GENERAL LAND OFFICE, *August 25th*, 1858.

J. Loughborough, Esq., surveyor general, St. Louis, Mo.

SIR: Your letter of 23rd June last, in relation to the Hunot survey, No. 2500, in the Grande Prairie common field, N. M. certificate No. 161, is before me. In this case the Honarable Truston Polk recently made application at this office on behalf of Peter Lindell, representative of Joseph Hunot, and on the 23rd inst. the Hon. Edward Bates, as counsel for said Lindell, filed an argument in the case.

It is now agreed on the part of Mr. Lindell to accept a patent for survey No. 2500 as shown on the diagram before this office, certified by you on the 27th May, 1858, saving and excepting therefrom the interferences as indicated by said diagram. I have therefore to request that, if upon examination of the survey in connextion with the original location and the record of your office you find it substantially in accordance with said location and such as under the long-established principles respecting old surveys should be finally approved, you will give special notice to all parties interested, and proper public notice that if at or before the expiration of three months from the date of notice valid cause should not be shown to the contrary the plat will be finally approved, excepting & excluding therefrom the following adverse claims conflicting therewith:

No. 1663, Pierre Barribeau.
No. 1664, Louis Lacroix.
No. 1665, Louis Laroche.
No. 1813, Vincent Bouis, under P. Chouteau.
247 No. 1814, B. Riviere dit Bacanne.
No. 3340, Guillaume Bizet.
No. 1815, Peter Lacroix.

You will then at the proper time furnish the recorder with a duly certified plat, to be forwarded to this office with his certificate as the basis of a patent.

The original survey and pat. cert. No. 404 are enclosed; also the argument of Mr. Bates, all to be returned.

Very respectfully, your ob't servant,

JOS. S. WILSON,
Acting Commissioner.

RECORDER'S OFFICE, SAINT LOUIS, 18*th February*, 1859.

SIR: I herewith transmit:

1st. A plat and transcript of survey No. 2500, in t'p. 45 N., R. 7 E., 5 p'l mrd., of the location under New Madrid certificate No 161, granted to Joseph Hunot or his legal representatives, for 480 acres.

248 The document was returned on the 5th instant by the surveyor general, with a copy of your instructions of the 26th August, 1858.

2nd. Patent certificate No. 492, issued for survey No. 2500 in conformity with the above instructions.

3rd. The abstract of certificate No. 492. The necessary annotations to show that certificate No. 904, which had been formerly issued for survey No. 2500, is superseded by certificate No. 492 are made in the books. Mess. Ed. Bates and Peter Lindell, of this city, claim the patent.

I am, very respectfully, sir, your obedient servant,

ADOLPH RENARD, *Recorder.*

Thomas A. Hendricks, Esq., Commissioner of the General Land Office, city of Washington.

Letter of Sec'y of Int. to Com'r Gen'l Land Office, Nov. 12, '60.

DEPARTMENT OF THE INTERIOR, *November* 12*th*, 1860.

SIR: Your report of the 10th May last submitted to me the case wherein C. C. Whittlesey, as attorney for the Pacific R. R. Company, appealed from your decision in favor of issuing the patent upon the location and survey No. 2500 of New Madrid warrant No 161, issued to Joseph Hunot. After an examination thereof my decision is in favor of issuing the patent.

The original warrant was duly issued in Aug., 1816, and the survey made June 23rd, 1819. The survey varied somewhat from the application to locate, but as the power to locate was with the surveyor general, who acted for the United States as well as for the claimant, neither the Government nor third persons whose

249 rights are not affected by the variance can interpose that objection where the party is satisfied and the location is made in compliance with the law.

It is contended by the attorney for the railroad that the location is void, inasmuch as the survey was not certified to the recorder of land titles at St. Louis till January, 1833; and the 2d section of the act of 26 April, 1822, places a limitation upon the location and requires the survey to be returned to the recorder prior to April 26th, 1823. (See Stat., vol. 3, p. 668.) The cases he cites, Bagnull *vs.* Broderick, 13 Peters, p. 436, and Lescieur *vs.* Price, 12 Howard, p. 74, and also those of Barry *vs.* Gamble, 3d Howard, p. 51, and Hale *vs.* Gaines, 22d Howard, p. 159, do establish the proposition that until a notice or return of the survey is presented to the recorder of land titles at St. Louis and recognized by him it can have no force as

against the United States, as it is incomplete under the requirements of the New Madrid act of 17th February, 1815; but this survey was returned to the recorder in January and a patent certificate issued in February, 1833, and the location then became complete. If otherwise, in accordance with law the patent should issue upon the survey.

The act of 9th April, 1818, limited the time of applying for warrants under the act of 17th Feb., 1815, to the 1st January, 1819, and the 2nd section of the act of 26th of April, 1822, required that all warrants not located prior to the date of that act "shall be located within one year after the passage of this act." Now, as limitation in the act of 1818 is upon the acts and discretion of the claimants under the act of 1815, I am disposed to regard the act of 1822 also in that light. When that limitation expired there appears to have been nothing remaining to be done by Hunot or the claimants under him to complete his location. His warrant appears to have been returned to the officers and to have been on
250 file with the survey. He had surrendered his land a- New Madrid, or offered to do so, and it only remained with the officers of the United States to act in order to close the transaction. Hunot could not at any time after the execution of the survey by the deputy surveyor and the filing and record- thereof in the office of the surveyor general have withdrawn his warrant for relocation without the concurrence of the execution officers entrusted with the completion of his title; and as the warrant and survey remained on file when the act of 1822 expired, I do not think the limitation therein affects the rights of the claimants after the subsequent favorable action of the surveyor general and recorder in the case, although that action was had subsequent to the 23rd April, 1823, nor do I think that the arguments and decision of the Supreme Court of the United States in Easton *vs.* Salisbury, 21st Howard, 431, and Hale *vs.* Gains, 22d Howard, p. 159, are in conflict with this construction of the limitation in question. The decision in Barry *vs.* Gamble I regard as sustaining the view I have taken.

There is an allegation by some of the parties opposing the survey that the land was not liable to location; but as no specific ground for such allegation is set forth, and your report states no objection of this kind, it is presumed to be untenable.

* * * * * * *

Very respectfully, your ob't serv't,

J. THOMPSON, *Secretary.*

To Jos. S. Wilson, Commis. Gen'l Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *September 27th*, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy relinquishment of certain lands in New Madrid county, Missouri, to the United States by Rufus Easton, executed November 1, 1816, and its execu-

251 tion acknowledged before Joseph Charless, J. P. for St. Louis county, Missouri Territory, November 11, 1816; also a copy of a letter, dated St. Louis, 12th March, 1833, from Peter Lindell to the Commissioner of the General Land Office, transmitting copy survey No. 2500 and patent certificate No. 404, and requesting the issue of patent thereon; also a copy letter, dated St. Louis, June 23rd, 1858, from the surveyor general of Missouri and Illinois to the Commissioner of the General Land Office relative to said survey No. 2500; also a copy letter, dated August 25, 1858, from the acting Commissioner of the General Land Office to the U. S. surveyor general, St. Louis, Missouri, in response to the surveyor's said letter of June 23, 1858; also a copy letter, dated Saint Louis, Fe'ry 10th, 1859, from the U. S. surveyor general of Missouri and Illinois to the Commissioner of the General Land Office in response to the Commissioner's said letter of August 25, 1858; also a copy letter, dated Saint Louis, 18th February, 1859, from the recorder of land titles, Missouri, to the Commissioner of the General Land Office, transmitting plat and transcript of survey No. 2500, in township 45 north, of range 7 east, of the 5th principal meridian, Missouri, of the location under New Madrid certificate No. 161, granted to Joseph Hunot or his legal representatives, for 480 acres, and patent certificate No. 492, with an abstract, and also a copy letter, dated November 12, 1860, from the honorable Secretary of the Interior to the Commissioner of the General Land Office relative to said survey No. 2500 and the issue of patent thereon, are true and literal exemplifications of said relinquishment and letters as they appear of record or on file in this office.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner.

252 C, with report of 19th August, 1852.

The following notice, inserted from the 11th to the 18th May, 1846, in the Daily Missourian and the Daily Missouri Republican, both published in Saint Louis, Missouri:

Public Notices in Connection with Cozzens' Surveys.

Notice.

To all persons interested in the confirmed unsurveyed private land claims in the Grande Prairie and Cul-de-Sac common fields:

SURVEYOR'S OFFICE,
SAINT LOUIS, *9th May*, 1846.

William H. Cozens, a deputy to the surveyor of United States lands for the district of Illinois & Missouri, has this day been instructed by me to survey and connect with the adjacent surveys the several confirmed land claims below specified in the Grande Prairie

and Cul-de-Sac common fields, in the vicinity of Saint Louis and in T. 45 N., R. 7 E., of the 5th p'l meridian, viz:

Grande prairie.

1st.	Baptiste Riviere dit Baccane	1	by 40 arp's.
2nd.	Pierre Barribeau	1½	by 40 "
3rd.	Francois Bissonette	½	by 40 "
4th.	Auguste Chouteau, under Widow Bissonette	2	by 40 "
5th.	Samuel Bridge (same as J. B. Ortez)	2	by 40 "
6th.	August Condé	2	by 40 "
7th.	Francois Faustine dit Parent	1	by 40 "
8th.	Jeannette, free negro woman	1	by 40 "
9th.	Pierre Lacroix	2	by 40 "
10th.	Louis Laroche	1	by 40 "
11th.	Jacob Lasablouiere	1½	by 40 "
12th.	Francis Marechal	½	by 40 "
13th.	Antoine Reynar	1	by 40 "
14th.	Claude Tinon	1½	by 40 "
15th.	Benito Vasquez	1	by 40 "
253 16th.	Louis Lacroix	1	by 40 arp's.
17th.	Antoine Roy	1	by 40 "
18th.	Jno. Bte. Hervieux	2	by 40 "
19th.	William or Guillaume Bizet	1	by 40 "

Cul-de-Sac.

20th.	Joseph Sorin dit Larochelle	2 by 40 arp's.
21st.	Jacques Noise dit Labber'- legal representatives	2 by 40 "
22nd.	Joseph Ride or Ridde's legal representatives	1 by about 30 arp's.
23rd.	Antoin Marechal's legal representatives	1 by 40 arp's.
24th.	Joseph Vachard Sen'r's legal representatives	1 by 40 "

Mr. Cozens is furnished with copies of and extracts from such of the files and records of this office and that of the United States recorder of land titles as relate to the confirmations and localities of the several claims; but as a number of the tracts cannot be located by the data thus furnished, I have to call on those interested for such additional evidence as it may be in their power to produce.

The evidence must be in writing, in order that it may be filed in this office for future reference. It should, if possible, consist of depositions taken on the ground as to the situation of original improvements and certified copies or extracts from the records of the office of the recorder of Saint Louis county; but any other written evidence will be received and filed which the owners may suppose will throw any light on the subject in question.

Mr. Cozens will commence his operations on the ground
254 on or about the 18th instant, when and where all who think proper may attend.

F. R. CONWAY,
Surveyor General of the States of Illinois & Missouri.

No. 1 with report of 30 January, 1855.

Public Notice.

Office of the surveyor general for Illinois & Missouri.

ST. LOUIS, *September 14th*, 1853.

By the instructions of the Commissioner of the General Land Office dated the 23rd of August, 1853, this office has been directed to make a thorough examination of the respective locations of each of the following confirmed tracts of land which were surveyed by Wm. H. Cozens, deputy surveyor, in the southern part of the Grand Prairie common field of St. Louis, in view of the approval or rejection of said surveys, to wit: Lot No. 4 on plat, Francis Marechal, Sr., legal reps., ½ arpent; lot No. 6 on plat, Auguste Conde, 2 arpens; lot No. 7 on plat, Francis Faustin dit Parent, 1 arpent; lot No. 8 on plat, Benito Vasques, 1 arpent; lot No. 9 on plat, Pierre Barribeau, 1½ arpents; lot No. 10 on plat, Louis Lacroix, 1 arpent; lot No. 11 on plat, Louis Laroche, 2 arpents; lot No. 13 on plat, Baptiste Rivierre, 1 arpent; lot No. 14 on plat, Guillaume Bizet, 1 arpent; lot No. 20 on plat, Pierre Lacroix, 2 arpents, and 22 on plat Joseph Saurin dit Larochelle, 2 arpents in the Cul-de-Sac.

The above lots interfere with the following surveys, viz: No. 2499, for Martin Cootz, under New Madrid cert. No. 145; No. 2692, for Joseph Geueroux, under New Madrid cert. No. 19; No. 2712, James Conway, under New Madrid certificate No. 348; No. 2500, Joseph Hunot, under New Madrid certificate No. 161, and with fractional section 16 of T. 45 N., R. 7 E., reserved for school purposes.

255 And this office is also instructed to give information to all parties interested in the approval or rejection of the survey for the aforesaid lots, Nos. 4, 6, 7, 8, 9, 10, 11, 13, 14, 20, and 22, of the instructions referred to in order to afford them the opportunity of furnishing this office, in behalf of their rights, such testimony or evidence as they may think proper, preparatory to rendering my decision in the case to the Commissioner of the General Land Office.

Notice is hereby given to said parties that I will receive documents relative to the matter at issue until the first day of November next.

JOHN LOUGHBOROUGH,
Surveyor General.

Department of the Interior, General Land Office.

WASHINGTON, D. C., *Feb'y 17th*, 1880.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplifications of public notice in connection with the "Cozens survey" of the "Grand Prairie common fields and Cul-de-Sac of St. Louis, Mo.," as the same appear on file in this office.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

256 It is agreed that either party may use such as they may desire.

I next offer the report of the surveyor general of Illinois and Missouri to the Commissioner of the General Land Office in regard to Cozens' survey as aforesaid.

(Same agreement as the previous offer.)
(For this report see p. 140 to 174 of this transcript.)

I next offer the confirmation of a grant to William Bisett, American State Papers, volume 8, page 48, and the translations in connection therewith. I desire to show this because William Bisett is the northernmost claim.

No. 286. Guillaume Bizet, claiming 40 arpens.

On the said day (7th February, 1769), upon the demand of Guillaume Bizet, inhabitant, we have granted and do grant to him in full property for him, his heirs or assigns, a tract of land situated at the Cul-de-Sac of the Grand prairie, containing one arpent in width by forty in depth, joining on one side the land of Bacannet, on the other side to that of Kiery Desnoyers, on condition to establish the said land in one year and a day, and that it will be subject to public charges and others which it may please his majesty to impose.

At St. Louis on the said day and year.

ST. ANGE LABUXIERE.

ST. LOUIS, *June* 12, 1835.

I certify the above to be truly translated from Livre Terrien, page 21, of record in the recorder's office.

JULIUS PE MUN, *T. B. C.*

257

No.	Name of original claimant.	Arpens.	Nature and date of claim.	By whom granted.	By whom surveyed, date, and situation.
286	Guillaume Bizet	40	Concession, February 7, 1769.	St. Ange.	

Evidence with Reference to Minutes and Records.

JUNE 2, 1835.

The board met pursuant to adjournment.
Present: F. R. Conway and James H. Relfe, commissioners.
Guillaume Bizet, by his legal representatives, claiming 40 arpens

of land, situated in the Cul-de-Sac of Grand prairie. (See Livre Terrien, Book No. 1, page 21; Book F, page 155.)

Pierre Gueret, duly sworn, says that he is fifty-seven years of age; that he knows the tract claimed; that he owned land near the said tract, and that he has perfect recollection of having seen the late Jean Baptiste Provenchere (who had married the widow of Guillaume Bizet, the original grantee) in possession of the tract now claimed, and that said Provencher cultivated the same for many years, but how long he cannot say. Witness further says that said Provenchere did cultivate said land while under the government of Francisco Perez or Zenon Trudeau, or maybe under both, he is not positive, but he is certain it was before Mr. Delassus was lieutenant governor. (See Book No. 7, page 166.)

JUNE 12, 1835.

The board met pursuant to adjournment.

Present: F. R. Conway and J. H. Relfe, commissioners.

Guillaume Bizet claiming 40 arpens of land. (See Book No. 7, page 165.) The board are of opinion that this claim ought to be confirmed to the legal representatives of the said Guillaume Bizet, deceased, according to the concession. (See Book No. 7, page 180.)

JAMES H. RELFE.
F. R. CONWAY.

I have examined the transcript of the above claim and concur in the decision.

F. H. MARTIN.

258 I next offer survey 3340, plat and description, and survey, dated 1857, of a tract of land of 34 and $\frac{68}{100}$ acres situated in the Grand Prairie fields, etc.:

Survey No. 3340.

Survey 3340.

Plat and description of the survey of a tract of land of 31.68 acres situate in the Grand Prairie common field of St. Louis, in township 45 north of the base line, range 7 east of the 5th principal meridian, in the State of Missouri, executed in the years 1850 and 1855 by William H. Cozens, deputy surveyor, under instructions from the surveyor general for Illinois and Missouri, dated 9th of May, 1846, and the 22nd of February, 1855, this being the tract of one by forty arpens granted to Guillaume Bizet on the 7th of February, 1769, by St. Ange & Labaxiere, officers of the government in the Spanish province of Upper Louisiana, and confirmed to said Guillaume Bizet's legal representatives by act of Congress of the 4th of July, 1836, entitled "An act confirming claims to land in the State of Missouri and for other purposes," according to the decision No. 286 of the board of commissioners appointed under the act of Congress of the 9th of July, 1832, entitled "An act for the final adjustment of private-land claims in Missouri," and the act of Con-

gress of the 2nd of March, 1833, supplemental thereto. See Livre Terrien, Book No. 1, page 21, in the office of the recorder of land titles.

(Here follows diagram marked p. 259.)

259 *Description.*

Beginning at a stone twelve inches long, six inches wide, four inches thick, the southwest corner of this survey—

Thence south sixty-one degrees east at thirty-three chains and sixty-one links a rail fence bears north twenty-nine degrees east and south twenty-nine degrees west; at thirty-nine chains and fourteen links a stone eleven and a half inches long, eight and a half inches wide, four inches thick, at the intersection with the west boundary of survey numbered two thousand seven hundred and twelve, in the name of James Conway or legal representatives, which is also a line of survey numbered two thousand five hundred, in the name of Joseph Hunot or legal representatives, from which the southwest corner of the James Conway survey bears south thirty minutes west twenty-two chains and seventy-one links distant;

260 at forty-six chains and sixty links a fence bears north twenty-nine degrees east and south twenty-nine degrees west; at fifty-one chains and eighty links a point three and one-fourth links northward of a double black oak twelve inches in diameter; at sixty chains and seventy-four links a board fence; at sixty-four chains and ninety-nine links a fence; at sixty-eight chains and forty-eight links a board fence bears southeast; at seventy-two chains and ninety-six links a spring branch runs southeast; at eighty-five chains and sixty-one links a stone fourteen inches long, eight and a half inches wide, two inches thick, set with the edges east and west, at the intersection with the south boundary of the James Conway survey, which is also a line of the Joseph Hunot survey, from which a black oak 12 inches in diameter bears north seventy-two degrees and forty-five minutes west eleven links distant, and the corner common to the Joseph Hunot and the James Conway survey bears south eighty-nine degrees west and fifty minutes east eighty-one links distant; at eighty-six chains and fifty links a stone thirteen inches long, ten inches wide, three inches thick, set with the edges north sixty-one degrees west and south one degrees east, at the intersection with the west boundary of section sixteen, in township forty-five north, range seven east, which is also an eastern boundary of the Joseph Hunot survey, from which a black oak seventeen inches in diameter bears north twenty-seven degrees and fifteen minutes west twenty-eight links distant, and a black oak eight inches in diameter bears north fifty-eight degrees east thirty-two and a half links distant, and the corner common to the Joseph Hunot and the James Conway survey bears north forty-five minutes east forty-four links distant; at ninety-three chains and forty-six links a point one hundred and fifty links northward of a spring; at ninety-four chains and twenty-one links a spring branch runs southwest, and at one hundred and three chains and eleven links

a stone fourteen inches long, eight inches wide, three inches
261 thick, set with the edges north seventy-five degrees and twenty-five minutes west and south seventy-five degrees and twenty-five minutes east, at the intersection with the north boundary of survey numbered nine hundred and three, in the name of Widow Camp, legal representatives, corner to this survey, from which a black oak eighteen inches in diameter bears south twelve degrees and forty-five minutes west forty-four and a half links distant, and a black oak eighteen inches in diameter bears south twenty-eight degrees and fifty-five minutes west — links distant.

Thence south seventy-five degrees and twenty-five minutes east with the north boundary of the Widow Camp survey, at two chains and fifty links a board fence; at five chains and sixteen links a stone; at ten chains and twenty-eight links a board fence, and at eleven chains and seventy-four links a stone twenty-eight inches long, six inches wide, three inches thick, set on the south side of a dead oak with the edges north seventy-five degrees and twenty-five minutes west and south seventy-five degrees and twenty-five minutes east, corner to this survey, to survey numbered one thousand eight hundred and thirteen, in the name of Vincent Bouis, legal representatives, under Pierre Chouteau, and also to survey numbered one thousand eight hundred and fourteen, in the name of Baptiste Riviere dit Baccanne or his legal representatives, from which a black oak four inches in diameter bears north sixty-one degrees west thirty-two links distant, and a black oak nine inches in diameter bears south six degrees and thirty minutes west twelve links distant.

Thence north sixty-one degrees west with the southern boundary of the Vincent Bouis and the Baptiste Riviere surveys, at one chain and thirty-nine links a board fence; at nine chains and twenty-nine links a board fence; at ten chains and forty-two links a spring branch runs southward; at nineteen chains and sixty links a branch five links wide runs southward; at twenty-nine chains and
262 sixty links a stone eleven inches long, seven and a half inches wide, four and a half inches thick at the intersection with the west boundary of section sixteen, which is also a line of the James Conway survey; at forty-two chains and ninety links a branch runs southwest; at fifty chains and seventy links a board fence; at fifty-one chains and sixty links a point in the south side of a stable, seventy-two links westward of its southeast corner; at fifty-four chains and thirty-nine links a point in the north side of the stable; at fifty-five chains and eighty-seven links a stone, from which the southeast corner of an enclosure bears north thirty degrees, east forty-two links distant; at sixty-six chains and two links a large stone on the summit of a ridge; at sixty-nine chains and eighteen links cross a fence; at seventy-six chains and seventy links a stone fourteen inches long, ten and a half inches wide, three and a half inches thick, at the intersection with the line between the James Conway and the Joseph Hunot surveys; and at one hundred and fourteen chains and fifteen links a stone fourteen inches long, seven and a half inches wide, and three inches thick,

the northwest corner of this survey, and the southwest corner of the Vincent Bouis and of the Baptiste Riviere surveys.

Thence south twenty-eight degrees and forty-five minutes west two chains and ninety-one and two-thirds links to the beginning corner.

Statement of the interferences of surveys No. 3340, with other surveys:

1st. Section 16 reserved for the schools, surveyed in the year 1818 by Joseph C. Brown; area of the interfering part, 6.74 acres.

2nd. Two following surveys founded upon certificates issued by Frederick Bates, United States recorder of land titles in the
263 Territory of Missouri, under the provision of the act of Congress of the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," viz:

Survey No. 2500, certificate No. 161, issued to Joseph Hunot or legal representatives for 480 acres on the 12th of August, 1816; located on the 16th of June, 1818, by Rufus Easton; surveyed by Joseph C. Brown on the 23rd of June, 1819; patent certificate No. 404 issued on the 2nd of February, 1833, by the recorder of land titles in the State of Missouri; area of the interfering parts (11.16 ac's + 0.02 ac.)—11.18 acres, and

Survey No. 2712, certificate No. 348, issued to James Conway, or legal representatives, for 200 arpens, on the 20th of November, 1817; located on the 16th of June, 1818, by Taylor Berry and Mathias McGirk; surveyed by Joseph C. Brown on the 23rd of June, 1819; patent certificate No. 322 issued by the recorder of land titles on the 20th of May, 1823; area of the interfering part, 13.16 acres.

Office of the surveyor general for Illinois and Missouri.

SAINT LOUIS, *October 24th*, 1857.

The foregoing plat and description of survey numbered three thousand three hundred and forty are this day approved as recorded on pages three hundred and twelve and three hundred and thirteen of this book.

JNO. LOUGHBOROUGH,
Surveyor General.

Office of the surveyor general for Illinois and Missouri.

SAINT LOUIS, *Sept. 17th*, 1858.

The foregoing plat and description and certificate of approval of survey No. 3340, is correctly copied from pages 312, 313, and 314, of "Record Book F," on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

264 I next introduce a confirmation to Louis Laroche's legal representatives:

Office of the recorder of land titles.

ST. LOUIS, *3rd September*, 1857.

Confirmation Certificate No. 144.

It is hereby certified that under the first section of the act of Congress, approved on the 13th of June, 1812, entitled "An act making further provisions for settling the claims to land in the Territory 'of Missouri' and the two acts of Congress of the 26th May, 1824, and 27th January, 1831, supplemental or having reference thereto. Louis Laroche's legal representatives were confirmed in their claim to a tract of land of two by forty arpents, situated in the Grand Prairie common field of St. Louis.

It is further certified that the same has been lawfully surveyed in conformity with said confirmation in the said common field, being in township 45 north of the base line, range 7 east of the 5th principal meridian, in the State of Missouri, as appears from the accompanying plat and transcript of survey numbered 1665, authenticated and returned on the 3rd of September, 1857, to this office by John Loughborough, surveyor general of the district of Illinois and Missouri, to wit: Beginning at A on the plat, the northeast corner of the survey, and running thence north 61 degrees west with the northern line of the survey 116 chains 91 links to its northwest corner; thence south 28 degrees 45 minutes west with the western line of the survey 5 chains 83 links to its southwest corner; thence south 61 degrees east with the southern line of the survey 109 chains 81 links to a corner thereof; thence south 75 degrees 25 minutes east with a line of the survey 7 chains 33 links to a corner thereof, and thence north 28 degrees 45 minutes east with the eastern line of the survey 4 chains one link to the beginning corner, all in English measure. Said survey number 1665 contains $67\frac{56}{100}$ acres.

265 It is further certified that the whole area of said survey No. 1665 is interfered with by surveys previously executed, viz., to the amount of $37\frac{73}{100}$ acres in section 16, reserved for the schools, and in the following surveys of locations under the act of Congress of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," to wit, to the amount of $3\frac{20}{100}$ acres in survey No. 2500 under certificate No. 161, issued to Joseph Hunot's legal representatives for 480 acres, and of $27\frac{63}{100}$ acres in survey No. 2712 under certificate No. 348, issued to James Conway or legal representatives for 200 arpens.

In testimony whereof I have hereunto set my hand on the day and in the year above written.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

Recorded at page 142 of book of confirmation certificates.

Survey No. 1665.

Plat and description of the survey of a tract of land of 67.56

acres situated in the Grand Prairie common fields of Saint Louis, in township 45, north of the base line, range 7 east of the 5th principal meridian in the State of Missouri, executed in the years 1850 and 1855 by William H. Cozens, deputy surveyor, under instructions from the surveyor general of Illinois and Missouri, dated the 9th of May, 1846, and the 22nd of February, 1855, this being the tract of two by forty arpents confirmed to Louis Laroche's legal representatives by the act of Congress of 13th of June, 1812, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri." The extent and boundaries thereof were proven on the 28th of July, 1825, before Theodore Hunt, United States recorder of land titles in the State of
266 Missouri, in conformity with the provisions of the act of Congress of the 26th of May, 1824, entitled "An act supplementary to an act passed on the 13th day of June, one thousand eight hundred and twelve, entitled 'An act making further provisions for settling the claims to land in the Territory of Missouri.'" See Recorder Hunt's Minute Book No. 2, page 98, in the office of the recorder of land titles. See also No. 592 in Hunt's list in the office of the surveyor general.

(Here follows diagram marked p. 266.)

267 *Description.*

Beginning at a point in the middle of Olive street plank road, *to* the southeast corner of the Louis Lacroix survey, numbered one thousand six hundred and sixty-four, and the northeast corner of this survey, thence north sixty-one degrees west with the southern boundary of the Louis Lacroix survey and with the middle line of the Olive street plank road; at four chains and eighty-five links the eastern edge of Grand avenue; at six chains and seven links the western edge of Grand avenue; at seven chains and thirty-one links the toll-gate of the road; at forty-six chains and twenty links a culvert over a branch five links wide, running southwest; at sixty-five chains and sixty-one links a cedar post at the intersection with the west boundary of section sixteen, in township forty-five north, range seven east, which is also a line of survey numbered two thousand seven hundred and twelve, in the name of James Conway or legal representatives; at seventy-five chains and ninety-six links a culvert over a branch five links wide running southwest; at one hundred and thirteen chains and ten links, a stone twenty and a half inches long, six inches wide, three and a half inches thick; at the intersection with the west boundary of the James Conway survey, which is also a line of survey numbered two thousand five hundred, in the name of Joseph Hunot or legal representatives, from which the northwest corner of the James Conway survey and the southwest corner of survey numbered two thousand six hundred and ninety-two, in the name of Joseph Genereux or legal representatives, bears north fifty-seven links distant, and at one hundred and sixteen chains and ninety-one links a stone ten inches long, seven and a half inches wide, four inches thick the southwest cor-

ner of the Louis Lacroix survey and the northwest corner of this survey; thence south twenty-eight degrees and forty-five minutes west five chains and eighty-three links to a stone thirteen
268 inches long, seven inches wide, and three inches thick in the northern boundary of survey numbered one thousand eight hundred and thirteen, in the name of Vincent Bouis' legal representatives under Pierre Chouteau, the southwest corner of this survey; thence south sixty-one degrees east with the northern boundary of the Vincent Bouis survey; at seven chains and nineteen links a stone fourteen and a half inches long, six and a half inches wide, six inches thick, at the intersection with the line between the Joseph Hunot and the James Conway surveys; at twenty-one chains and nineteen links a point in the west side of a frame house; at thirty-one chains and forty-eight links a board fence bears northeast and southwest; at thirty-seven chains and sixty-three links a rail fence; at forty-one chains and twelve links a point about sixty links southward of the remains of an old chimney, said to be of Laroche's house; at forty-two chains and forty-two links a point about fifty links south of a spring; at forty-two chains and ninety-two links a point in the middle of the bed of a branch twenty links wide, running southward; at fifty-four chains and forty-eight links a stone thirteen inches long, twelve inches wide, three and a half inches thick, at the intersection with the west boundary of section sixteen, which is a line of the James Conway survey; at twenty-one chains and thirty-three links a branch five links wide runs southwest; at seventy-six chains and ninety-four links a board fence; at eighty-four chains and twenty-eight links a rail fence and at one hundred and nine chains and eighty-one links a stone fifteen inches long, eight and a half inches wide, three inches thick, at the intersection with the northern boundary of survey numbered nine hundred and three in the name of Widow Camp's legal representatives, corner to this survey and to fractional section sixteen, from which a red oak five inches in diameter bears south thirty degrees and
269 twenty-five minutes west seven links distant and a red oak five inches in diameter bears north seventy-four degrees and thirty minutes west twenty-five links distant; thence south seventy-five degrees and twenty-five minutes east with the northern boundary of the Widow Camp survey; at one chain and thirty-six links the west edge of Grand avenue; at two chains and fifty-one links the east edge of Grand avenue, and at seven chains and thirty-three links a well-dressed stone eighteen inches long thirteen inches wide two and a half inches thick, marked "P. L." on the south side, corner to this survey, from which a black oak eighteen inches in diameter bears north fifty-four degrees and thirty-two minutes west one hundred and thirty-eight and a half links distant; thence north twenty-eight degrees and forty-five minutes east four chains and one link to the beginning corner.

Statement of the Interferences of Survey No. 1665 with other Surveys Previously Made.

The following surveys are founded upon certificates issued by Frederick Bates, United States recorder of land titles in the Territory of Missouri, under the provisions of the act of Congress of the 17th of February, 1815, entitled, "An act for the relief of the inhabitants of the late county of New Madrid, in Missouri Territory, who suffered by earthquakes:"

1st. Survey No. 2500, certificate No. 161, issued to Joseph Hunot or legal representatives for 480 acres on the 12th of August, 1816; located on the 16th of June, 1818, by Rufus Easton; surveyed by Joseph C. Brown on the 23rd of June, 1819; patent certificate No. 404 issued on the 2nd of February, 1833, by the recorder of land titles in the State of Missouri; area of the interfering part, 3.20 acres.

270 2nd. Survey No. 2712, certificate No. 348, issued to James Conway or legal representatives for 200 arpens on the 20th of November, 1817; located on the 16th of June, 1818, by Taylor Berry and Mathias McGirk; surveyed by Joseph C. Brown on the 23rd of June, 1819; patent certificate No. 322 issued by the recorder of land titles on the 20th of May, 1823; area of interfering part, 27.63 acres.

3rd. Section 16 reserved for the schools; surveyed in the year 1818 by Joseph C. Brown; area of interfering part, 36.73 acres.

Office of the surveyor general for Illinois and Missouri.

SAINT LOUIS, *May 23rd*, 1857.

The foregoing plat and description of survey numbered one thousand six hundred and sixty-five are this day approved as recorded on pages two hundred and ninety-eight, two hundred and ninety-nine, and three hundred of this book.

(Signed) JNO. LOUGHBOROUGH,
Surveyor General.

Office of the surveyor general of Illinois and Missouri.

SAINT LOUIS, *September* 3, 1857.

The foregoing plat and description of survey No. 1665, in the name of Louis Laroche's legal representatives, and the certificate of approval attached thereto are correctly copied from pages 298, 299, and 300 of Record Book F, on file in this office.

JNO. LOUGHBOROUGH,
Surveyor General.

To Adolph Renard, Esq., U. S. recorder of land titles, St. Louis, Mo.

271 RECORDER'S OFFICE, SAINT LOUIS, 3 *September*, 1857.

I have this day issued confirmation certificate No. 144 on the foregoing survey, according to law and instructions.

ADOLPH RENARD,
U. S. Recorder of Land Titles in the State of Missouri.

272 This is to show the claims lying beside these lands and west of this land were confirmed in a prairie common field survey by Cozens as surveyor.

I next offer certified letters from the General Land Office, showing the patent from Joseph Hunot, dated August 30th, 1859, was recorded the day of its date.

Letter Com'r Gen'l Land Office, Showing Patent to Jos. Hunot, Aug. 30th, 1859.

GENERAL LAND OFFICE, *August* 30, 1859.

The President's secretary for signing patents.

SIR: Your signature is requested to the patent herewith sent as recorded vol. II, pages 405 to 413, inclusive, in favor of "Joseph Hunot or his legal representatives," for a private claim in Missouri, survey No. 2500, patent certificate No. 492.

Very respectfully, your ob't servant,

JOS. S. WILSON,
Acting Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December* 28, 1881.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of a letter, dated August 30, 1859, from Jos. S. Wilson, acting Commissioner of the General Land Office, to the President's secretary for signing patents in the matter of the claim of Joseph Hunot, in the State of Missouri, survey No. 2500, is a true and literal exemplification of the original as it appears of record in this office.

273 In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.]

N. C. McFARLAND,
Commissioner of General Land Office.

Letter Com'r Gen'l Land Office to Recorder Gen'l Land Office, Aug. 30, 1859.

GENERAL LAND OFFICE, *August 30th*, 1859.

SIR: I have to request your signature — the patent herewith as recorded vol. II, pages 405 to 413, inclusive, in favor of "Joseph

Hunot or his legal representatives," for a private claim in Missouri, survey No. 2500, patent certificate No. 492.

Very respectfully, your ob't servant,

JOS. S. WILSON,
Acting Commissioner.

J. N. Granger, Esq., recorder of the Gen'l Land Office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *December 20th*, 1881.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copy of the letter, dated August 30th, 1859, addressed to J. N. Granger, recorder of the Gen'l Land Office, is a true and literal exemplification from the original on file in this office.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the
274 city of Washington, on the day and year above written.

N. C. McFARLAND,
Commissioner of General Land Office.

I next desire to offer an exemplification copy of patent, dated December 29th, 1859, and issued in favor of Elliot McCollough and heirs, recorded pages 414, 415, immediately succeeding the patent to Joseph Hunot.

Letter of Com'r Smith to Com'r Indian Affairs, Jan'y 23d, '60.

GENERAL LAND OFFICE, *January* 23, 1860.

(Honbl. A. B. Greenwood, Commissioner of Indian Affairs.)

SIR: I transmit herewith for such disposal as may be proper a patent as recorded vol. II, pages 414, 415, in favor of Elliot McCullough, for his reserve under the treaties of 1842 & 1845 with the Wyandott-s. Said patent is issued in accordance with the approval of the location by the office of Indian affairs of 18th February, 1859.

Very respectfully, your ob't servant,

S. A. SMITH,
Commissioner.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 18, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy is a true and literal exemplification of a letter recorded in this office as addressed to the Commissioner of Indian Affairs under date of January 23, 1860, by S. A. Smith, Commissioner of the General Land Office.

275 In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the [SEAL.] city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Of.

Patent sent to Com. In. Affairs.
Jan'y 23rd, 1860.

ELLIOT McCULLOCH.

Copy of Patent to McCullough Heirs.

The United States of America to all to whom these presents shall come, Greeting:

Whereas by the fourteenth article of the treaty between the United States of America and the Wyandott-Nation of Indians, made and concluded at Upper Sandusky, in the State of Ohio, on the seventeenth day of March, one thousand eight hundred and forty-two, as ratified on the fifth day of October, one thousand eight hundred and forty-two, the United States agreed to grant to "Elliot McCulloch" one section of land of six hundred and forty acres "out of any land west of the Missouri river set apart for Indian use not already claimed or occupied by any person or tribe;" and whereas by the ninth article of the treaty with the same tribe, made and concluded at the city of Washington on the thirty-first day of January, one thousand eight hundred and fifty-five, "it is stipulated and agreed that each of the individuals to whom reservations were granted by the fourteenth article of the treaty of March seventeenth, one thousand eight hundred and forty-two, or their heirs or legal representatives shall be permitted to select *and* said reservations on any Government lands west of the States of Missouri and Iowa subject to pre-emption and settlement, said reservations to be patented by the United States in the names of the reservees as soon as practicable after the selections are made;" and it is
276 declared in said article that "the reservees, their heirs or proper representatives, shall have the unrestricted right to sell and convey the same whenever they may think proper; but in cases where any of said reservees may not be sufficiently prudent and competent to manage their affairs in a proper manner, which shall be determined by the Wyandotte council, or where any of them have died leaving minor heirs, the said council shall appoint proper and discreet persons to act for such incompetent persons and minor heirs in the sale of the reservations and the custody and management of the proceeds thereof, the persons so appointed to have full authority to sell and dispose of the reservations in such cases, and to make and execute a good and valid title thereto;"

And whereas it appears from a return dated the eighteenth day of February, one thousand eight hundred and fifty-nine, from the office of Indian affairs to the General Land Office, that there has been selected and approved as the reserve of the said "Elliot McCulloch," under the treaty stipulations above mentioned, the fol-

lowing-described tract, to wit: Section twenty-eight, containing six hundred and forty acres, in township twelve south of range seventeen east of the sixth principal meridian, in the Territory of Kansas:

Now, know (*know*) ye that the United States of America, in consideration of the premises and in conformity with the provisions, as above recited, of the aforesaid treaties, have given and granted and by these presents do give and grant unto the said "Elliot McCulloch" and to his heirs the tract of land above described; to have and to hold the said tract, with the appurtenances, unto the said "Elliot McCulloch" and to his heirs and assigns forever, in conformity with the provision of the treaties as aforesaid.

In testimony whereof I, James Buchanan, President of the United States, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

277 Given under my hand, at the city of Washington, the twenty-ninth day of December, in the year of our Lord one thousand eight hundred and fifty-nine, and of the Independence of the United States the eighty-fourth.

By the President:

[L. S.] JAMES BUCHANAN,
By J. A. LEONARD, *Sec'y.*

JOS. S. WILSON,
Acting Recorder of the General Land Office ad Interem.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 18, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of a patent dated December 29th, 1859, issued in favor of Elliot McCulloch and his heirs, is a true and literal exemplification of the original patent as the same appears of record in this office in vol. 11, "Record of Donation Patents," on pages 414 and 415, immediately succeeding a patent to Joseph Hunot recorded in said volume eleven, on pages 405 to 413, inclusive.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

J. M. ARMSTRONG,
Acting Commissioner of General Land Office.

(Pl'ffs objected as incompetent and irrelevant, being matters between other parties. Court overruled objections and pl'ffs duly excepted.)

278 I next desire to read a certified copy of a judgment against Samuel Hammond in favor of the United States for $26,494.10, dated September 9th, 1824. (Plaintiffs objected as incompetent and irrelevant and court excluded same. Def't duly excepted.)

Certified Copy J'gm't of U. S. vs. Hammond.

UNITED STATES OF AMERICA,
OFFICE OF THE SOLICITOR OF THE TREASURY,
WASHINGTON, *April* 29, 1879.

Pursuant to section 883 of the Revised Statutes of the United States I hereby certify that the annexed is a true copy of the records in the case of U. S. *vs.* Samuel Hammond, late receiver of the public moneys at St. Louis, Missouri, and now on file in this office.

In witness whereof I have hereunto set my hand and caused the seal of that office to be affixed on the day and year first above written.

[SEAL.]

K. RAYNER,
Solicitor of the Treasury.

Institution of suits.	Name of attorney & district.		Against whom & in what capacity.		Residence.	Sureties.	Amount due.		Am't recovered.		By whom reported.
	Attorney.	District.	Name.	Capacity.			Dollars.	Cts.	Dollars.	Cts.	
July 21, 1823.....	Joshua Barton	Missouri.....	Samuel Hammond...	Receiver of public money.	St. Louis ..	No bond....	21,577	11	....		1st Comptroller.

REMARKS.

Continued Feb'y term, 1824, on affidavit of defendant.

Judgment September term, 1824, for $26,680.35; def't removed to Georgia; no visible property in Missouri.

See letter to D. A. of 25 Oct., 1824; "*non est & nulla bona.*" See marshal's return for March, 1825. See letter of 29 April, 1825, to the marshal of Georgia, enclosing *ca. sa.*, &c.

See letter to D. A. of June 3, 1825, returning *ca. sa.* & calling for a *fi. fa.*

See letter of 20 Oct., 1825, to the marshal of S. Carolina enclosing an exen., &c; no property found whereon to levy. Hammond has been arrested under the execution transmitted to the marshal of South Carolina, and is now in close confinement in the gaol of that district. See letter of Morton A. Waring (marshal) of 7 Feb'y, 1826.

See letter of 1st Comptroller of Feb'y 18, 1826, relating to cost, &c. Discharged from imprisonment by the President of the U. S. on certain conditions. See letter to John Gadsden, Esq., D. A., of March 6th, 1826.

See letter to Edward Bates, Esq., dist. att'y of Missouri, dated March 25, 1826, transmitting to him a schedule of Mr. Hammond's property, with his original assignment thereof to the U. States, with instructions also to dispose of the real property and collect certain obligations and judgments, &c., &c.

Copy of assignment, &c., on file under letter H. See D. A. letter of 21 April, 1826. Ans'd 13 June, 1826. The assignment of Hammond to E. Bates, late dist. att'y, is considered of little value. See D. A. letter of February 9th, 1830.

See letter of 28th June, 1834, to D. A. in relation to this case on Mr. Waring's record.

See letter of June 9th, 1841, from the Comm'r of the Gen'l L. O. relative to this case.

See letter of 17th June, 1841, to the Comm'r of the Gen'l L. O. respecting this case.

1876, Janu'y 25th, Att'y Gen'l wrote, requesting that the deed from Hammond be sent to him.

1876, January 25, sent Att'y Gen'l copy of assignment made by Hammond.

1876, Janu'y 25, Attorney Gen'l returned it.

1879, April 17, wrote to Charles Gilpin, adm'r of E. Bates, requesting him to return original assignment and schedule made by Hammond.

1879, April 23, Hon. J. B. Henderson wrote, requesting duly certified copies of all papers in this case.

1879, April 29, sent copies requested to Hon. J. B. Henderson, attorney-at-law, St. Louis, Mo.

280 UNITED STATES OF AMERICA, } *sct:*
Eastern Division of the Western District of Missouri, }

In the District Court of the United States for the District of Missouri, September Term, A. D. 1824, at St. Louis, Mo.

THURSDAY, *September 9th*, 1824.

UNITED STATES }
vs.
SAMUEL HAMMOND. }

Now, at this day, come the parties aforesaid, by their respective attorneys aforesaid, and thereupon also come a jury, to wit, Benjamin Emmons, John B. Bossier, Henry Vonphul, Antoine Dubriel, John B. Rebeau, Edward Tracy, Charles Gregoire, Ruluff Peck, John B. Sarpy, Peter Ferguson, Peter Lindell, and David Deshler, twelve good and lawful men, who, being duly elected, tried, and sworn well and truly to try the issue within joined between the parties aforesaid, upon their oaths aforesaid do say that the said Samuel Hammond did undertake and promise in manner and form as the said plaintiffs have above thereof complained against him, and they assess the damage of the said plaintiffs by them sustained, by reason of the non-performance of the promise and undertaking in the declaration mentioned, to the sum of twenty-six thousand six hundred and eighty dollars and thirty-five cents. Therefore it is considered by the court that the said United States of America recover against the said Samuel Hammond their damages aforesaid, in form aforesaid by the jury assessed, and also their costs and charges by them about their suit in this behalf expended, and that they have thereof execution.

(*Execution.*)

MISSOURI DISTRICT, *sct:*

The President of the United States of America to the marshal of the Missouri district, Greeting:

281 Whereas the United States of America, at our district court, before our judge thereof, have recovered against Samuel Hammond the sum of twenty-six thousand six hundred and eighty dollars and thirty-five cents for their damages by them sustained by reason of the non-performance of the promises and undertakings in the declaration mentioned, together with their costs and charges by them about their suit in that behalf expended, which to the said United States were adjudged as appears to us of record: These are, therefore, to command you that of the goods and chattels, lands and tenements, of the said Samuel Hammond in your district you cause to be made the aforesaid damages and costs, and that you have the same before the judge of our said court on the first Monday of March next to render to the said United States the damages and costs aforesaid, and for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same we command

you — take the said Samuel Hammond, if he be found in your district, and him safely keep so that you may have his body before the same judge on the said first Monday of March next to satisfy the said United States of the aforesaid damages and costs, and that you certify to our said judge how you execute this writ, and have you then there this writ.

Witness the Honorable James H. Peck, Esquire, judge of the United States for the Missouri district, the ninth day of October, [SEAL.] eighteen hundred and twenty-four. Issued at office, in St. Louis, under the seal of said court, the day and year last aforesaid.

ISAAC BARTON, *Clerk.*

(Endorsed:) No. 6. March term, 1825. United States *vs.* 282 Samuel Hammond. Execution. Judg't. Sept. 9th, 1824.

Damage	$26,680 35
Clerk	8 04⅔
Marshal	4 10
	$26,692 49⅔

(Endorsement by marshal:) Rec'd Oct. 12, 1824. Jno. Simonds, Jr., D. marshal.

(*Marshal's Return.*)

The within Samuel Hammond has no lands and tenements, goods and chattels, in my district that I can find whereon to levy and satisfy this execution or any part thereof; neither is the body of said Hammond to be found in my district.

March 7th, 1825.

H. DODGE, *Marshal,*
By JON. SIMONDS, JR.,
D'p'y Marshal.

Fees, $0.50.

(*Al. Ex. Sent to Ga.*)

MISSOURI DISTRICTS, *sct:*

The President of the United States of America to the marshal of the district of Georgia, Greeting:

Whereas the United States, at our district court, before our judge thereof, have recovered against Samuel Hammond the sum of twenty-six thousand six hundred and eighty dollars and thirty-five cents for their damages by them sustained by reason of the non-performance of the promises and undertakings in the declaration mentioned, and also their costs and charges by them about their suit in that behalf expended, which to the said United States were adjudged as appears to us of record: These are, therefore, to command you, as heretofore we commanded the marshal of the Missouri district, that of the goods and chattels, lands and tenements, of the said Samuel Hammond in your district you cause to be made the afore-

said damages and costs, and that you have the same before
283 the judge of our said court on the first Monday of September next, to render to the said United States the damages and costs aforesaid; and for want of sufficient goods and chattels, lands and tenements, whereon to levy and make the same we command you to take the said Samuel Hammond, if he be found within your district, and him safely keep, so that you have his body before the same judge on the said first Monday of September next to satisfy the said United States of the aforesaid damages and costs, and that you certify to our said court how you execute this writ, and have you then and there this writ.

Witness the Honorable James H. Peck, Esquire, judge of the United States for the Missouri district, the fifth day of
[SEAL.] April, in the year of our Lord one thousand eight hundred and twenty-five.

Issued at office in St. Louis under the seal of said court the day and year last aforesaid.

ISAAC BARTON, *Clerk.*

(Endorsed:) No. 10. September term, 1825. The United States *vs.* Samuel Hammond. Judg't. Sept. 9th, 1824.

Damages	$26,680 00
Clerk	9 50
Marshal	4 60
	$26,694 10

(*End. by Marshal of Georgia.*)

UNITED STATES, *Dist. of Georgia.*

MARSHAL'S OFFICE, GEORGIA, SAVANNAH, 23 *May*, 1825.

The defendant Samuel Hammond is not to be found in this district.

Return of—

JNO. H. MORIL, *M. D. G.*

284 UNITED STATES OF AMERICA, *Western District of Missouri, Eastern Division,* } *ss:*

I, Louis Schmidt, clerk of the district court of the United States for the western district of Missouri, hereby certify the writing hereto annexed is a true copy of the judgment and of two executions issued subsequently thereon, together with the returns of marshal thereupon in the case of The United States *vs.* Samuel Hammond, as fully as the same remains on file and of record in said case in this office.

In witness whereof I hereunto subscribe my name and
[SEAL.] affix the seal of said court, at office, in the city of Jefferson, in said district, this twenty-seventh day of October, A. D. 1879.

LOUIS SCHMIDT, *Clerk.*

I next offer the schedule and deed of Samuel Hammond and a letter of the United States district attorney to Mr. Pleasanton, the agent of the Treasury, dated November 23rd, 1824.

(Pl'ff objected as incompetent and irrelevant, and court excluded the same. Def't duly excepted.)

Schedule of Hammond Property.

(Copy of copy.)

S. Hammond's schedule of property to be conveyed to the United States.

		Estimates.
	Messrs. March and others' notes between $4 and 5,000, subject to some deduction for payments, which are credited on the notes, say $1,300 or $2,000, left in the hands of R. Wash for collection, and to be paid over to United States	3,000
	C. Walter Wilkinson's obligations for $2,000, with a mortgage of four young negro men; also his note for	
285	$850, taken up in the bank of St. Louis	2,850
	Judgment in court of common pleas in county of St. Louis against I. Jones for $600, with costs and damages and interest	750
	Judgment in court of common pleas, county of St. Louis, against Captain Guy for $400, with interest	500
	Ditto, ditto, against Captain Hunt for $100, with interest	150
	Ditto, ditto, against Sanguennett and Bright for $4 or 500, with interest	550
	750 acres of land, Sandy creek, county of Charles, granted to Dejourley, and old concession and plantation conveyed by Dejourley and wife to Samuel Hammond, deed with G. Hammond, Missouri, cost $5 per acre seven years since	3,750
	640 acres of land, Glaze creek, Jefferson county, six miles from Herculaneum, good plantation and fine apple orchard and good fruit, including small salt spring, and half a mile from a sulphur spring of great resort, cost $1,500	3,000
	House and two improved lots in town of Herculaneum, called Baker's house, conveyed to S. H.	500
	98 well-situated lots in the above town, estimated from $100 to $150 p'r lot	9,800
	4 fine acre lots out of Herculaneum, worth $200 each	800
	A corner lot in St. Louis, corner of Third or Church and Cross streets, cost 6 years since	1,800
	House and lot in Crondelett, 6 miles below St. Louis, cost $400	400

$\frac{1}{16}$ part of town of Osage, commonly called Port Osage, and of the section of land out of which it has been taken, being six miles below the city of Jefferson, at the confluence of the Osage with the Missouri river, having a front on both, subject to a balance of $1,000 to be paid the original proprietors out of sales of lots worth much, but say cost 500

286

A brick house in St. Louis, new and well finished, with convenient outbuildings; house cost $4,000, lot $600, outbuilding in addition; this has the incumbrance of an illegal sale and purchased in for $100, to be redeemed on payment of that sum and interest 4,000

A location of a New Madrid claim of 220 acres of land upon and covering the Awatchetaw Hot Springs, in Arkansas Territory, one undivided moiety or $\frac{1}{2}$ part of this valuable property, the greatest watering place in the western country, its value incalculable, and for which moiety $10,000 in five annual installments have been offered, titles recorded in Arkansas 5,000

Stock, furniture, and all left in Missouri, 82 shares in the Bank of St. Louis, $\frac{3}{5}$rds paid in 5,466

William M. O'Hara's note for $1,500 1,500

One undivided moiety of two adjoining tracts of land in the State of Illinois, on Mississippi river, immediately in front of the town of St. Louis, including a ferry, called and known as Campbell's ferry, cost 15 years since $5,000, estimated now at double that sum and then under value 5,000

(Signed) S. HAMMOND.

UNITED STATES OF AMERICA:

Office of the Solicitor of the Treasury.

WASHINGTON, *April* 29, 1879.

287 Pursuant to section 883 of the Revised Statutes of the United States I hereby certify that the annexed is a true copy of a paper now on file in this office.

[SEAL.] In witness whereof I have hereunto set my hand and caused the seal of that office to be affixed on the day and year first above written.

K. RAYNER,
Solicitor of the Treasury.

Copy of Deed, S. Hammond to U. S.

(Copy of copy.)

UNITED STATES OF AMERICA,
South Carolina District, Charleston.

Whereas I, Samuel Hammond, late of the State of Missouri, a prisoner in the South Carolina district, under a final process issued

from the district court of the United States for the district of Missouri on a judgment in favor of the United States for the sum of twenty-six thousand six hundred and eighty dollars, petitioned the President of the United States for my discharge upon my assigning, which I offered to do, all the property, real and personal, of which I was possessed or in which I had any interest, as set forth in a schedule *is* also annexed to the said petition (a copy of which schedule is also annexed to this deed of assignment); and whereas his excellency was pleased to consent to my discharge upon the said condition:

Now, know all men by these presents that I, Samuel Hammond, in consideration of the premises, have granted, bargained, delivered, assigned, transferred, and set over, and by these presents do grant, bargain, deliver, assign, transfer, and set over, unto the United States of America all the property, real and personal, contained in a schedule hereunto annexed as a part of these presents:

288 To have and to hold all and singular the said property in the said schedule mentioned for the purpose of paying and satisfying therefrom the judgment before mentioned and all expenses whatever which may have attended its enforcement and my arrest; and I do hereby covenant, at the request of the United States, to deliver up all notes, bonds, vouchers, stock, grants, title deeds, and all other documents whatsoever relating to the property mentioned in the said schedule to the said United States, and also that I will do all other reasonable acts, matters, and things whatsoever for the ratifying and confirming these presents.

In witness whereof I have hereunto set my hand and seal this thirteenth day of March, in the year of our Lord eighteen hundred and twenty-six.

(Signed) S. HAMMOND. [SEAL.]

Sealed and delivered in presence of—
MORTON A. WARING.
JOHN GADSDEN.

UNITED STATES OF AMERICA:

Office of the Solicitor of the Treasury.

WASHINGTON, *April* 29, 1879.

Pursuant to section 883 of the Revised Statutes of the United States I hereby certify that the annexed is a true copy of a copy of a paper now on file in this office.

In testimony whereof I have hereunto set my hand and [SEAL.] caused the seal of that office to be affixed on the day and year first above written.

K. RAYNER,
Solicitor of the Treasury.

289 *Letter of U. S. Att'y to Agent of Treas'y, Nov.* 23, '24.

ST. LOUIS, *Nov.* 23, 1824.

In reply to the letter of Oct. 25 I will say in the general that all

its directions will be obeyed; yet some of its points need further explanation. In the case of Sam'l Hammond I have already issued execution in hopes of catching some remnants of his former estate. He is gone to Georgia, and I will forward to you a *ca. sa.* as soon as the present writ shall be returned. * * *

I have the honor to be, most respectfully, sir, your ob't servant,

E. BATES.

S. Pleasonton, agent of the Treasury.

UNITED STATES OF AMERICA:

Office of the Solicitor of the Treasury.

WASHINGTON, *April* 29, 1879.

Pursuant to section 883 of the Revised Statutes of the United States I hereby certify that the annexed is a true copy of the original letter now on file in this office.

In testimony whereof I have hereunto set my hand and [SEAL.] caused the seal of that office to be affixed on the day and year first above written.

K. RAYNER,
Solicitor of the Treasury.

I now read the latter of John Gadsden to Samuel Pleasonton, agent of the Treasury, dated the 13th of March, 1826.

(Pl'ff objected as incompetent and irrelevant, and court excluded the same. Def't duly excepted.)

290 *Letter of J. Gadsden to Agent of Treasury, M'ch* 13, '26.

CHARLESTON, 13 *March*, 1826.

SIR: Coln. Hammond has executed the assignment required, which I now enclose. The deed to Strother is in his possession. As the schedule accompanied the petition, I thought it best to take an assignment of everything in it.

Very respectfully your ob't serv't, JOHN GADSDEN.

S. Pleasonton, Esq.

UNITED STATES OF AMERICA:

Office of the Solicitor of the Treasury.

WASHINGTON, *April* 29, 1879.

Pursuant to section 883 of the Revised Statutes of the United States I hereby certify that the annexed is a true copy of the original letter now on file in this office.

In witness whereof I have hereunto set my hand and caused the seal of that office to be affixed on the day and year first above written.

[SEAL.]

K. RAYNER,
Solicitor of the Treasury.

I next desire to read the petition of Samuel Hammond to the President of the United States under the insolvent debtor's act.

(Pl'ffs objected as incompetent and irrelevant, & court excluded the same. Def't duly excepted.)

Petition of S. Hammond to Pres't U. S. A.

To his excellency the President of the United States:

The petition of Samuel Hammond showeth that your petitioner is a prisoner in the district of South Carolina, in the United
291 States, at the suit of the United States under a final process issued by the district court of the United States for Missouri, authorising the taking of your petitioner's body to satisfy a judgment in favor of the United States for twenty-six thousand six hundred and eighty dollars, being the amount recovered by the United States, together with the costs of suit; that your petitioner, after he had ascertained in Missouri that he was a debtor to the United States as a receiver of public monies for a balance which he could not meet immediately with cash, transferred by deed duly executed to his successor in office, George F. Strother, in trust for the United States, real estate then considered more than sufficient in value to secure the said balance.

That your petitioner also immediately put into the hands of an attorney for collection all debts, notes, &c., due to him, for the purpose of making the payment of the said balance, if the assigned land should prove insufficient; that your petitioner, after making these arrangements, left the State of Missouri, intending, after visiting his friends in South Carolina, the place of his former residence, to go on to Washington for the purpose of obtaining from the Department of the Treasury certain equitable allowances in the settlement of his accounts; that, being detained on his way by a severe and protracted illness, and execution against him reached the district of South Carolina while he was lying sick at Augusta, in Georgia; that upon being apprized that the deputy marshall had come to Hamburg, in South Carolina, in pursuit of him, your petitioner crossed over the Savannah river and surrendered his person; that your petitioner is seventy years of age and with impaired health, and has no hope of being ever able to discharge the said debt but from the property left by him in the State of Missouri; that he hath no other property than that in the State of Mis-
souri and in Arkansas and Illinois, a schedule of which is
292 annexed to this petition, and that he is willing and ready to assign the same to the United States; and your petitioner prays that as his case is excepted from the insolvent law of January, 1800, and he, as receiver of public moneys, can only be relieved by your excellency, under the act of the 3rd of March, 1817, that your excellency will order his discharge from imprisonment upon his compliance with such terms and conditions as may seem proper to your excellency.

21 February, 1826.

S. HAMMOND.

Charleston, South Carolina.

SCHEDULE.

		Estimates.
	Messrs. March and Ober's notes, between $4 & 5,000, subject to some deduction for payments which are credited on the notes—say $1,300 or $2,000—left in the hands of R. Wash for collection and to be paid over to United States	3,000
	C. Walter Wilkinson's obligation for $2,000, with a mortgage of four young negro men; also his note for $850, taken up in the Bank of St. Louis	2,850
	Judgment in court of common pleas in county of St. Louis against I. Jones for $600, with costs and damages & int.	750
	Judgment in court of common pleas in county of St. Louis against Capt. Guy for $400, with interest	500
	Ditto, ditto, against Capt. Hunt for $100, with interest	150
	Ditto, ditto, against Sanguennett & Bright for *for* $4 or $500, with interest, &c.	550
293	750 acres of land, Sandy Creek, county of Charles, granted to Dr. Joinsley; an old concession and plantation conveyed by Dr. Joinsley and wife to Sam'l Hammond, deed with G. Hammond, Missouri, cost $5 per acre seven years since	3,750
	640 acres of land, Glaze Creek, Jefferson county, six miles from Herculaneum; good plantation and fine apple orchard & good fruit, including a small salt spring and a half a mile from a sulphur spring of great resort; cost $1,500	3,000
	House and two improved lots in town of Herculaneum, called Baker's house, conveyed to S. H.; 98 well-situated lots in the above town, estimated from $100 to $150 per lot	9,800
	4 fine acre lots of Herculaneum, worth 200 each	800
	A corner lot in St. Louis, corner of Third or Church and Cross streets, cost 6 years since $1,800	1,800
	House and lot in Carondelett, 6 miles below St. Louis, cost $400	400
	$\frac{1}{16}$ part of town of Osage, commonly called Post Osage, and of the section of land out of which it has been taken, being six inches below the city of Jefferson at the confluence of the Osage with the Missouri river, having a front on both, subject to a balance of $1,000 to be paid the original proprietors, and of sales of lots, *with* much, but say cost	500
291	A brick house in St. Louis, new and well finished, with convenient outbuildings; house cost $4,000, lot 600, outbuildings in addition; this has the incumbrance of an illegal sale and purchased in for $100, to be redeemed on payment of that sum and interest	4,000
	A location of a new Madrid claim of 200 acres of land upon and covering the Owatchetaw Hot Springs in Arkansas Territory, one undivided moiety or $\frac{1}{2}$ part of this valuable property, the greatest watering place in the western country, its value incalculable, and for which moiety $10,000, in five annual instalments, have been *offered*; titles recorded in Arkansaw	5,000

Stock furniture, &c., all left in Missouri, 82 shares in the Bank of St. Louis, ⅗rds paid in 5,466
Wm. M. O'Harris' note for $1,500 1,500
One undivided moiety of two adjoining tracts of land in the State of Illinois, on Mississippi river, immediately in front of the town of St. Louis, including a ferry called, known as, Campbell's ferry, cost 15 years since $5,000; estimated now at under value 5,000

Let the petitioner be discharged after making the assignment to the United States of his property as offered in the petition.
2 March, 1826.

J. Q. ADAMS.

Order of discharge made out under date of March 6, 1826, and handed same day to S. Pleasonton, 4th aud'r, for the purpose of his directing, relative to the assignment, & forwarding the order to its proper destination.

W. S.

295 UNITED STATES OF AMERICA,
DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that the document hereto annexed is a true copy from the files of this Department.

In testimony whereof I, William M. Evarts, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 13th day of December, A. D. 1879, and of the Independence of the United States of America the one hundred and fourth.

[SEAL.]

WM. M. EVARTS.

(Pl'ffs objected as incompetent & irrelevant, & court excluded the same. Def't duly excepted.)

I now desire to read a deed executed to the United States of all the property which Hammond said he owned.

(See page 288 of this Transcript.)

I now desire to read the discharge signed by John Quincy Adams on this petition.

I now put the schedule of property in as testimony without reading it and will say that this land is not described in it.

I next read the letter of Edward Bates to Samuel Pleasonton dated April 24th, 1826.

I next read Pleasonton's reply to Bates dated June 13th, 1826.

(Pl'ff- excepted as incompetent and irrelevant. Court excluded the same. Def't duly excepted.)

296 We now offer under our stipulation heretofore filed the deposition of John B. Hortiz, commencing on p. 64 of the Record; next the testimony of Benoist Mareschal, commencing on page 71; next the testimony taken in the Coleman case of Therese

Crevia, page 77; next the testimony of Pierre Cornell, page 84; next the testimony of Francois Robideaux, page 88.

Deposition of John Bte. Hortz on file in this case in words and figures following, to wit:

Deposition of JOHN BAPTISTE HORTIZ, of lawful age, being produced, sworn, and examined on the part of the defendants, deposeth and saith:

Q. What is your age?

A. I was born in 1791, on the 11th day of March.

Q. Where were you born?

A. I was born in Saint Genevieve.

Q. How long have you been living in St. Louis?

A. I have been living here since I was one month and a half old, as my mother told me.

Q. What was your age, if you remember, at the time of the change of government?

A. I was 9 years old in 1800; in 1804, the change of government, I was then about 13 years old.

Q. Do you remember Cul-de-Sac of the Grand Prairie common fields of St. Louis before the change of government?

A. I recollect the Cul-de-Sac, Little prairie of the Cul-de-Sac.

Q. Did you ever see any of the inhabitants of St. Louis doing anything on that prairie before the change of government?

A. I don't remember but one person. The only man I saw who occupied that place was an old man by the name of Monta: year or two before the change of government. After that I know of several who occupied that place.

Q. Did you ever see any person whom you did not know doing anything there before the change of government?

A. I did not.

297 Q. Did you ever see any persons on that prairie working the land or cultivating the land before the change of government?

(Objected to by counsel for pl'ffs as leading.)

A. Yes, sir; I have seen persons occupying and cultivating the land.

Q. How many persons have you ever seen cultivating the land or working the land before the change of government?

A. Dear sir, I cannot tell how many I saw; I saw a good many, but cannot tell the number of them.

Q. Can you state how far that cultivation extended north and south?

A. As far as I can recollect—I did not measure the distance, but as far as I could see it was from the half moon, near Cherry street now—that is, the north end of it—and went down as far as Pam de Suere, near the Grand Coulee, and now the east and west of it; I will tell you; as far as I can recollect, from 4th street here to King's highway, 5 miles from here. That is the way I understood from my forefathers and saw with my own eyes, as far as I can recollect.

Q. Can you remember the field lots lying between Olive street on the north, the Barner des Noyes on the south, the King's highway on the west, and the little St. Louis common fields on the east, next the village?

A. As far as I can remember, the cultivated place, you understand me, was the cultivated place that the citizens of the village cultivated, and the balance part of it what was not cultivated was for the use of the village here for fire-wood and building lumber, what they wanted. Every one had a right to go from the village here and take what they wanted.

Q. How far were the field lots of the Cul-de-Sac in the Grand prairie, west of the 4th street of St. Louis, about?

A. I can't tell the distance; I never measured it. I can tell about where it joins. I knew where the place was about. I could show you the place were I on the grounds, if I could see. I
298 have lost my eyesight. South it joins the Barues des Yoyes; north it joins the Grand prairie.

Q. How many years did you see persons cultivating the common field lots of the Cul-de-Sac of the Grand prairie before the change of government?

A. I told you one or two years that I was certain of; I might have seen it before, but cannot tell certainly. That was before the change of government.

Q. Do you recollect any springs on the common-field lots in the Cul-de-Sac of the Grand prairie either before the change of government of after the change of government?

A. I will answer it to you as I know, you ask me; I know some springs there which I can name to you; whether they were on the cultivated ground or not, I cannot remember. I know of the springs and of the persons who owned them.

Q. Who was the persons who owned the springs, as you remember?

A. Mr. Corneau owned one of them—Marie and Hammond. Col. Hammond's spring west from here, little northwest. There is Rock spring. Now we go a little north of that, Mr. Boileau; that spring is now on Cabanne place, Boileau's spring.

Q. Can you recollect of any cultivation after the change of government in said Cul-de-Sac of Grand prairie by the same persons who cultivated them before, or their families?

A. That is a pretty hard thing for me to recollect. I know a family that cultivated for several years after the change of government, the same owners that used to own in the Spanish times.

Q. Give the names.

A. Mr. Vincent Bouis.

Q. How far south of the field lot of Vincent Bouis can you remember other cultivations of field lots in said Cul-de-Sac of Grand prairie in Spanish times, if any?

(Objected to as leading and suggestive.)

A. I don't remember their names.

Q. You don't remember their names; can you remember any of them?

299 A. Now, I can remember Francis Bequette, Jacque Marchele, Hyacinth De Petre. All of them places were cultivated prior to 1803; that was before the change of government.

Q. Do you remember whether any persons, inhabitants of St. Louis, were cultivating or not the common-field lots in the Cul-de-Sac of the Grand prairie, south of Vincent Bouis, before 1803, whose names you do not remember?

A. I can't recollect. I know it was cultivated, but can't tell the men's names who cultivated it.

Q. How far south of Vincent Bouis did persons cultivate whose names you don't remember?

A. I don't know; I don't know their names and don't remember how far. I never measured the ground.

Q. Can you remember whether or not the cultivations south of Vincent Bouis, in said Cul-de-Sac of the Grand prairie, extended as far as the Barnier de Noyes?

A. I stated it just now. It is the Little prairie of the Cul-de-Sac, and not the Grand prairie. The Grand prairie is north of that.

Q. Can you remember whether or not the cultivation south of Vincent Bouis, in the Little prairie of the Cul-de-Sac, extended as far as the Barner de Noyes or how far they extended?

A. No, sir; I can't tell.

Q. Did you ever know in Spanish times a man named John Baptiste Provenchere?

A. Yes, sir; I know him.

Q. Did he have a son?

A. Yes; he had a son.

Q. What is his name?

A. John Louis Provenchere.

Q. Who did John Baptiste Provenchere marry or who was his wife?

A. I don't remember the name of her family.

Q. Did you ever know Pierre Berger in Spanish times?

A. I can't recollect whether it was before the change or not. I knew a man by that name, but cannot say whether it was in Spanish times or not.

Q. Can you remember whether John Baptiste Provenchere ever cultivated or not any field lot in the Little prairie in the

300 Cul-de-Sac or the Cul-de-Sac of the Little prairie before the change of government?

A. Well, sir, I believe he has.

Q. Can you remember how near the Provenchere cultivation was to the Vincent Bouis lot?

A. I cannot tell how near it was, for all the neighbors was all joined together. There was no distance between them. They had no fence to divide them at the time I am talking of. There was nothing but a furrow between the lots; that was a line.

Q. Have you or not any recollection of an old Spanish road between the Vincent Bouis lot and the Provenchere cultivation, either

before or after the change of government, from about the end of Market street west and the King's highway?

A. Well, sir, all the road that we knew at that time was just a footpath from the city to all them places. We just took the footpath and followed that. That was when we gathered a parcel of children together, with our oldest brother with us, to go and gather up strawberries, blackberries, and hazel nuts in the fields—that is, in the woods. There — places cultivated, and the rest was covered with brier bushes and woods. I come to a remembrance of a circumstance that happened in that place that I know myself: An uncle of mine, of Gabrielle Bequette, while he was plowing in the field—you understand me—the Indians came and took him prisoner. Then they stripped him stark naked and put their bundles on his back, the Indians did. Then they made a pack-horse of him—you understand me—took the wiping sticks of their guns and stood on each side of him, and every now and then would give him a lick with the stick; and he was barefooted at that. I was not long with them. They took him from here, eight miles from here, north from here, in the Bellefontaine road, in the bottom—then, you know, there was a bottom there near the river. Well, they stopped there and camped there of a night. Then, after they got there and went to go to sleep, they took my uncle and lashed him to a sapling with a rope. Then there was a squaw of the
301 Indian that took pity on him, unbeknown to the Indians, and cut the rope off and let him loose. That very same night he came back home between two and three o'clock in the morning, stark naked, like a child just born, with his back all crossed from one side to the other with licks they gave him with the ramrods, and barefooted, and his feet all blistered.

Q. Can you remember how near the Provenchere cultivation was the Vincent Bouis lot?

A. I cannot tell how near it was, whether next to it or joining it, or perhaps in the same neighborhood. It was in the same field.

Cross-examination by PLAINTIFF'S ATTORNEYS:

Q. Where were you baptized?

A. I was born and baptized in Ste. Genevieve. Francis Valle was my godfather.

Q. Do you know Benoist Marechall?

A. I know so many of them, I cannot remember their Christian names. I know Ben. Marechall. He is frequently a witness in court. He and I are the two oldest citizens in St. Louis.

Q. Who is the oldest?

A. He says he is a little older than me. He may be one year or 11 months older than me, according to what he says. He says he was born in 1790, and I was born in 1791. He was born in January or February; I forget which. I was born in March.

Q. Who was the next oldest child of your mother's born before you—the one next older than you?

A. It was a sister. Her name was Leonora Hortez. She was 19

months older than me. We are the only ones that distance apart; all the rest are two years apart.

Q. About how many families were villagers of St. Louis at the change of government?

A. The only way I can come at it is by what I have learned at home from my people. Well, I was asking one day, at home, How many people are in this village? Father told me that there were 1,900 citizens in the place—in the village.

302 Q. When was that your father told you that—before the change of government?

A. It was before the change of government—it was before and until the change of government—that there were 1,900 inhabitants here.

Q. What were you doing at the change of government?

A. I was going to school, learning my business, learning music, dancing master, cabinet and turning business.

Q. What was about the distance from the half-moon fortification to Paun de Sueve?

A. I can't tell the distance any more than by saying that it is half way between here and Carondelet, or South St. Louis, as you call now.

Q. Whether you call a line drawn from half moon to the Paun de Sueve north and south—whether you mean in your testimony that that line is the east line of the common fields.

A. That the east line is 4th street and King's highway the west line; that is what I always understood. That is what I mean to say in my testimony-in-chief.

Q. Do you intend to be understood in your testimony-in-chief that all the lands within those limits were occupied or cultivated prior to the change of government?

A. Yes, sir. It was occupied and cultivated prior to the change of government and after up to this date.

Q. Did you know Auguste Chouteau, Rene Paul, Francois Norse, Antoine Smith, Theodore Papin, Pierre Chouteau, Sr., either of them? If you knew them or either of them, how much older were they than you respectively?

A. As for Auguste Chouteau, he might have been my grandfather when I was born. I know Rene Paul; he was older than me; he married into the Chouteau family. I know Francis Noise very well; he was 5 years older than me. Antone Smith is still older than all of us; he was at least 11 years older than either of *is*,

303 myself or Francis Noise. Theodore Papin was younger than any of us. I knew Pierre Chouteau; he was, at the least calculation, 4 or 5 years older than me—that is, Pierre Chouteau, Jr. I knew Pierre Chouteau, Sr.; he was older than me; he was as old as my own father.

Q. About the year 1804, March, what was the business of Auguste and Pierre Chouteau?

A. They were traders with Indians and furs, and called the head of the town—that is, by the poor people.

Q. What business were you engaged in — 1804?

A. I was learning my business, and going to school at night, and attending to learning *his* trade by day. I was learning music and dancing. Ever since 1805 I have been engaged in my business. I have been engaged in teaching music and dancing in St. Louis for 67 years.

Q. Mr. Hortiz, from your knowledge of Pierre and Auguste Chouteau and Rene Paul, do you think they were as competent in 1804 to know who cultivated the ground or possessed them between the King's highway and the east line of the common fields as you were?

A. Well, some of them were, I am pretty certain of.

Q. Did you know Theodore Hunt, recorder of land titles in 1824 and '25; and, if so, were you ever before him as a witness to testify to the cultivation of the common-field lots in the Grand prairie?

A. I don't remember I ever was. I knew Theodore Hunt in 1824 and 1825.

Q. When did that capture of your uncle take place?

A. It was about a year or two before the change of government. The Indians were very bad about St. Louis at that time. The forts were built to put the women in when the Indians attacked the city.

Q. Were the Indians dangerous before the change of government?

Q. They were before and after, till 1811, and then we swept them off.

Redirect examination:

304 & 305 Q. Do you remember where the commons of St. Louis were in 1804?

A. They were south, north, west, and inside the common fields.

Q. Where were the largest portion of the commons of St. Louis in reference to the French village of St. Louis?

A. South and southwest, as far as the Sugar Load and Carondelet.

JOHN B. HORTIZ.

Sworn and subscribed to before me this 12th day of December, 1874, at the place and within the hours aforesaid.

J. L. CARLISLE,
Notary Public, St. Louis Co., Mo.

Testimony of Benoist Mareschal in words and figures following, to wit:

Defendant's counsel then called as a witness BENOIST MARECHAL, who, being daly sworn, testified as follows, through O. W. Collett, who was sworn as interpreter:

By Mr. HILL:

Q. Where were you born?

A. Florissant.

Q. What is your name?

A. Benoist Mareschal.

306 Q. How long have you lived in the State of Missouri?

INTERPRETER: I have always been in the State of Missouri.

Q. How long have you been in St. Louis or Carondelet?

A. Since the year 1813.

Q. Were you ever in St. Louis before 1813?

A. Yes, sir; frequently before that time.

Q. I want to know when he was in St. Louis the first time.

A. He does not remember what year he was first in St. Louis.

Q. How old was he when he first came to St. Louis?

A. Thirteen or fourteen years of age when he first came.

Q. When was he born?

A. 1790—the 13th of April, as he understands. The information he gets from his parents. He cannot say precisely himself.

Q. Does he remember the common field lots of St. Louis in the Grand prairie—Cul-de-Sac Grand prairie?

A. He has knowledge of them from persons showing them to him—pointing them out to him.

Q. When did he first know those common field lots?

A. In 1816 he first knew the lots by their having been pointed out to him by those present; that person and the other persons.

Q. Did he ever go on those lots himself previous to that time?

A. He has passed over them, he thinks, before that time in going to Bernier des Noyes' place.

Mr. MORRISON: State where the Bernier place is.

A. He seems to be confused. He says they pointed out this place at the Fontaine Maria. It is a different place, but he seems to think he passed by them in going to this place of Bernier, which was Bernier des Noyes. He has passed over them, but did not look at them.

307 Q. Did he ever see any persons who lived in St. Louis working on these fields that were north of the Cul-de-Sac in Spanish times?

A. No; he was not here in Spanish times.

Q. How old was he when he first saw these fields cultivated?

A. About 1813 he saw them first cultivated.

Q. Does he remember a man named Philipson?

A. "I knew him for a long time," he says.

Q. Did he ever see Philipson on any portion of the land known as the Cul-de-Sac Grand prairie?

A. No.

Q. Did he ever see any improvements there since 1813—improvements, buildings, or cultivation, either one?

A. He has seen them since 1813 cultivated and houses on them.

Q. Did he ever know a man named Bouis?

A. Yes, sir.

Q. Vincent Bouis? Did you ever see him cultivate any part of that land since 1813 or 1816?

A. He has seen Bouis cultivate them, but can't say what particular spot.

Q. Does he know whether it was west of this court-house?
A. Yes, sir; behind him.
Q. How large a piece did Bouis cultivate?
A. I can't say.
Q. About how much?
A. He does not know; perhaps a couple of arpents.
Q. In width?
A. In width; don't know what length.
Q. Did Bouis have a house?
A. He had a house upon that land.
Q. Did he have a garden, fruit, &c.?
A. He paid no attention to his garden.
Q. Does he remember how long he lived there? How long did he know him to be there?
A. I don't know.
Q. About how many years?
A. I cannot tell you.
Q. Whenever he went there, did he see that house of Bouis?
A. It is between 30 or 40 years since he passed there.
308 Q. Did you know a man named Col. Samuel Hammond?
A. Yes, sir.
Q. Did he have a house out on this prairie?
A. He had a house at the Fontaine Marie, so called.

Mr. HILL: That is, the Marie spring, in English.
Mr. MORRISSON: The Hammond spring is better English.

Q. Did you ever see an old road running on the south side of Bouis' house that went to the King's highway and from Cabanne's place?
A. He does not know where the King's highway is. There was a road that passed south of Bouis' house and at the north the St. Charles road, a pretty good distance.
Q. Does he know whether that road run to Cabbanne's farm?
A. Yes, sir.
Q. To Cabbanne's house?
A. Passed obliquely down to Cabbanne's house.
Q. Did that road run south of Cabbanne's lake?
A. He don't know it; there were two or three ponds, but he can't say which is Cabanne's pond.
Q. Does he know whether this road run north and south of this pond—both ways north and south of this pond—or not?
A. There were a great number of roads there. Some went north of the Marie Fontaine and some by Cabanne's house.
Q. I desire to know whether this road that run south passed the house towards the west and forked and went on both of the low grounds which were near Cabanne's land—to the east of Cabanne's land?
A. There was one that passed south that went towards Cabanne's; another that went towards the north that went to a place he cannot remember. He never knew any Chemin de Roy that was on the

east of the land of the Cabanne farm. He knows no King's road on any side or anywhere.

Q. Does he know whether this road that runs south of Bouis' house and forked, and then run to Hammond spring, north
309 or south of the Marie spring?

Mr. MORRISSON: If you will show him a plat of the road that forked at the Hammond spring, which is the truth about it, then your witness will understand it (exhibiting map to the witness). Here is the spring and here the road.

A. Yes; the road came here and forked on both sides.

Q. Here is the road that run to the north of the Marie and that to the south.

A. That is the Marias Beauteau and this Cabanne lake; marked Cabanne lake is the Madam Beauleau lake.

Q. Did you ever see any old house of Madam Beauleau?

A. No. The foundation of the Beauleau house was pointed out to him; it was near the river below.

Mr. MORRISSON: Below Cabanne?

A. No, sir, no.

Q. West?

A. South and north. The foundation of Beauleu was at the north of Cabanne.

Mr. HILL: North of Cabanne; not at the north.

Q. And the Beauleau lake was the lake where these roads went on each side?

A. The road passed to both sides, but he don't know it by the name of Lake Cabanne. The Beauleau lake there—there was good fish in it.

The COURT: Do you know the location of the Beauleau and Bressett?

Mr. MORRISSON: This is a constructive map—not a map of the United States survey.

The COURT: You do not claim the location of this is identical with the survey?

Mr. HILL: No; this is the theory.

Mr. MORRISSON: You contend this is the survey as it ought to be?

Mr. HILL: Yes; and that is the Spanish road laid out.

Mr. MORRISSON: He don't say that.

By Mr. HILL:

Q. Do you remember where the old line of the cultivation of the field lot run—what direction they run in?

A. The lines ran from east to west, as they were indicated to him by persons who pointed them out. It so appeared to him.
310 Well, it appears that he was guided in his opinions of those lines by certain marks and indications that were pointed out to him by persons who were there, and those marks were used in sowing

wheat and whatever grains that they sowed then; put on sticks or something of the kind to mark out the lines.

Q. What I wish to know is where the lines run; whether due west or northwest.

A. East and west, he said.

Mr. MORRISSON: Without any deflection?

By Mr. HILL:

Q. How long ago does he remember having seen those old lines of cultivation and the small ridges between the lots in cultivation?

A. In the year 1814 or 1815.

Q. How long did he know Col. Hammond's house, near the Marie spring?

A. It is a very long time, and he is not very positive, but he thinks it is in 1819 or 1818 that he built it.

Q. How long did he see it standing there?

A. He don't know how many years it was there; the road was changed and did not require him to go by there.

Q. After what?

A. He says he don't know how long Hammond's house staid there; the road was changed and went another way.

Q. For what distance south of Hammond's house does he remember seeing those lines or cultivated lots or fields in the Cul-de-Sac and Grand prairie?

Mr. MORRISSON: I object to the form of the question. Ask him if he saw any lines there south of Hammond's house.

By Mr. HILL:

Q. Ask him if he saw any lines south of Hammond's house.

A. Yes; to the south.

Q. For what distance?

A. Two or three arpents to the south of the Fontaine a Marie.

Q. In cultivation?

A. He does not know on what land it was, but it was cultivated south of Hammond's house.

Q. Two or three arpents?

311 A. Two or three arpents to the south of Hammond's house.

Q. Does he know who cultivated those two or three arpens to the south of Hammond's house?

The WITNESS: My faith, I know nothing about it.

Q. You do not remember the name?

A. No; no knowledge of the individual.

Q. Did he ever know a man named Corneau?

A. No; he never knew a man named Corneau.

Q. Did he ever see the spring called Corneau spring?

A. There was shown to him what was called the Corneau's spring.

Q. How many springs have the Corneau Fontaine?

A. There were three or four together.

Q. How far south were they of the Hammond spring, and how far east?

A. Fifteen to twenty-five arpens east of Hammond's.
Q. How far south were they of the Vincent Bouis cultivation?
A. I can't tell you.
Q. About.
A. The Bouis was to the north; I can't tell your the distance.
Q. Were there any marks of cultivation south of the Corneau spring?
A. Yes.
Q. How far south?
A. One and a half or two arpens south.
Q. And in what direction did those lines of cultivation run?
A. They appeared to be in the same direction as the others.
Q. East and west?
A. Yes.
Q. Did it run toward the setting sun?

(Point designated by the witness.)

Q. Do you know whether Provenchere Berger, Marie Corneau, and those men were residents of the village of St. Louis?
A. He says: "Old Provenchere I well knew."
Q. Where did he live?
312 A. He lived in St. Louis, on Second street.
Q. In St. Louis?
A. Yes.
Q. Do you know where Mr. Boise lived?
A. Yes; he knew him to live in St. Louis. He didn't know him as an inhabitant. He only knew him as living on this prairie out here.
– Did you know Alexis Marie?
de-Sa No; I did not know him. I knew an Alexis Marie, but he was mill to.
A. Let him state if he knew Alexis Marie; when he knew him. have he never knew the senior. He knew the mother—the wife—
Q. How of Alexis Marie.
bandWhere did they live? Did they live in St. Louis?
A. They were inhabitants of Carondelet.
Q. Now, what year did he know them?
A. I can't tell you in what year I knew them. They moved to the portage.
Q. Did you ever know La Croix?
A. No.
Q. Did he ever know a man who was a lime-burner who lived on the corner of Third and Olive?
A. I knew him. Joseph La Croix or La Croix Bassinet.
Q. How long did you know that La Croix?
A. He was a little boy when I knew him.
Q. Do you remember the old cross—that there was an old cross. that stood upon the lot right opposite to La Croix in the town?
A. Yes; there was a cross of calvary; it was between La Croix and Corneau.
Q. Where was that—in town?

A. Yes.

Q. Did you ever know a man named Pierre Barraboux?

A. Yes, sir.

Q. Do you remember whether these two men had cultivations in the Grand prairie out there?

A. It was told to him that they had land, but he don't know it personally.

Cross-examination by Mr. MORRISON, counsel for the plaintiffs:

(Mr. Tesson, at the request of Mr. Collet, was sworn as an interpreter.)

Q. Tell the witness that here is the house of Hammond, and ask him if those are the springs here that he calls the Corneau spring (showing map to the witness and designating).

A. Yes; southeast. The old Fontaine lake; Corneau from the Cabanne road.

Q. Ask him where Boise lived—Vincent Boise tract. Ask him in what direction that was from the Corneau springs. Ask him to put his finger where Boise's house stands.

313 (Witness designates.)

A. He says that the Fontaine Corneau was here and the house of Boise was about there (indicating). He puts his finger on the lot marked "Bachinet" lot, and the Boise lot also.

Mr. HILL: He puts his finger on the one-arpen lot.

The COURT: The Boise two arpens covered the Bachinet.

Mr. MORRISON: Ask him if he ever knew any man named neau that he knows cultivated this land prior to the 20th of D ber, 1803.

A. No. ie.

Mr. MORRISSON: Now ask him if he ever saw, assuming th is Hammond's old house here—if he ever knows of the cultivated out here of this prairie by anybody before the year 1803; or knows anybody who cultivated it to name them, and to put finger on the spot that they cultivated.

A. He says nobody cultivated any ground there before 1803. He says he never knew any person to cultivate that land before 1803; did not see it.

Q. Does he know that it was cultivated before 1803; this here (designating)?

A. Yes; he has been told it has been cultivated. He says he has been told, they showed him about fifty years ago.

Q. That was in 1825?

A. No; in 1816.

Q. Ask him when he went in the Prairie des Noyes going to Carondelet, to Berniers, whether he went from Florissant to Berniers, or whether he went from St. Louis to Berniers. Now, there is the Prairie des Noyes, the common fields (indicating); here is north

of Boise, the Cul-de-Sac common field, Grand prairie. Now ask him in going, when he went to Berniers, if he went from St. Louis to Berniers, or from Florissant to Berniers.

A. He started from Berniers; there was a road that came through these common fields or Prairie des Noyes and went to St. Louis.

Q. Ask him if he went over this land (indicating).

A. He don't know.

Testimony of Therese Crevia in word- and figures following:

Testimony of THERESE CREVIA, sworn on behalf of the defendant-, testified as follows:

Direct examination by Mr. HILL:

Q. How old are you?

314 A. Well, sir, I can't tell you exactly, as I don't recollect, but my name is in the cathedral, on the paper

Q. You were baptised in the cathedral?

A. Yes, sir.

Q. Who was your godfather?

A. Mr. Sarsier; Mrs. Sarsier was my godmother.

Q. How old were you when the Americans took possession of St. Louis?

A. I was about ten or eleven years old; I remember it well, as if to-day.

Q. Were you ever at the Cabanne place when you were a girl?

A. Yes, sir.

Q. How old were you when you were out there?

A. I was a woman grown.

—. Did you ever see any of these Grand prairie field lots or Cul-de-Sac common field lots east of Cabanne place, near the Chouteau mill tract, when you were a girl ten years old?

A. Yes, sir; I saw some of them. Well, it has been so long I have forgotten.

Q. Did you ever see anybody working that land between Cabanne's and St. Louis here?

A. Yes, sir.

Q. How old were you when you saw them working that land?

A. Well, sir, I was a very young child.

Q. Do you recollect Madam Camp's place?

A. Yes, sir.

Q. Do you recollect Mr. Cabanne's place?

A. Yes, sir.

Q. On the west?

A. Yes, sir.

Mr. MORRISSON: Madam Camp never lived there. She lived on the River Des Peres, on the Camp and Roys. The Madam Camp tract is a different one from the one surveyed, but we can't help that.

Q. Do you remember old John Baptiste Provenchere that married the Widow Bissette?

A. Yes, sir.

Q. Did you ever see him or his black man working any men there?

A. No, sir; I did not see any black man there. I saw
315 the man there himself.

Q. Provenchere?

A. Yes, sir.

Q. Was old John Baptiste Provenchere working the land there?

A. Yes, sir.

Q. Do you know where that land is?

A. No; I can't tell nothing about it.

Q. Do you know how much he worked there—how wide it was?

A. No, sir; I can't tell you how wide.

Q. Nor how long?

A. It has been some time since.

Q. How old were you when you saw Provenchere cultivating on the Grand prairie?

A. Well, sir, I was a girl of about 11 years of age; picked up hazelnuts up there.

Q. Did you ever go there to pick blackberries with other girls?

A. Yes, indeed.

Q. When you were a small girl?

A. Yes, sir.

Q. Did you ever see any other men working on this land there when you were after blackberries as a child?

A. No, sir; the men I saw there I did not know them.

Q. I don't ask you for the names of the people, but if you saw different people out there working on the land.

A. No, sir.

Q. Did you ever see Mr. Bouis out there?

A. Yes, sir; I saw Mr. Bouis there; I knowed him well.

Q. How long did you know Mr. Bouis to be cultivating there?

A. Well, I can't tell you how long.

Q. Did he have a house?

A. Yes, sir.

Q. Do you recollect a man named Col. Hammond?

A. Yes, sir.

Q. Do you recollect the old Marie spring?

A. Yes, sir.

Q. Do you remember whether that was called the Hammond spring or not?

A. Yes, sir; it was called the Hammond spring.

Q. Do you recollect Hammond's house? About how far was it from the spring?

316 A. I can't recollect, but I can show you the spring right there.

Q. Have you been out on the ground within the last three or four days? Were you there last Monday—this week?

A. Yes, sir.

Q. You went out?

A. Yes, sir.

Q. Did you go out with Mr. Cozens to look at that land?
A. Yes, sir.
Q. Do you recollect pointing out where the Hammond spring was?
A. Yes, sir.
Q. And that was the old Marie spring?
A. Yes, sir.
Q. Do you recollect how far south Mr. Provenchere worked the land?
A. No, sir; I don't recollect that.

Mr. MORRISSON: She has not said he worked it south at all.

By Mr. HILL:

Q. Where did Provenchere work his land out there?
A. Well, I can't tell you exactly where.
By the COURT: Was it north or south of that spring?
Ans. On the south.

By Mr. HILL:

Q. Now, can you remember about how far south of that spring?
A. I cannot; it couldn't be very far, because there is the spring there.
Q. Do you recollect you pointed out on the ground this last Monday where the Provenchere cultivation was and where was the dividing line between the field lots of Boise and Provenchere?
A. Yes, sir.
Q. You recollect that?
A. Yes, sir.
Q. Now, the place you pointed out was the place where he cultivated?
A. Yes, sir.
Q. And he cultivated that before 1803?
A. I don't know how long before.
Q. Before the change of government?
A. Yes, sir.
317 Q. Now, do you recollect Mr. Phillipson?
A. Yes, sir.
Q. Do you know what land he cultivated there?
A. Right on this way (indicating).
Q. Did you point last Monday where Philipson got that land?
A. No, sir.
Q. Do you recollect how old you were when you saw Philipson cultivating there?
A. No, sir; I don't recollect how old I was then.
Q. Was it a long time after you saw Provenchere there?
A. Yes, sir.
Q. A great many years?
A. Yes, indeed.
Q. And at the same time you saw Philipson cultivating there did you see Mr. Boise on the north?
A. Yes, sir.

Q. Do you remember an old road between Bouse and Philipson?
A. No, sir; I don't give no idea at all; so many years. I don't remember at all.
Q. Did you see any other people working land south of old Mr. Provenchere whose names you don't remember now?
A. No, sir; I don't remember the names now.
Q. Did you see anybody cultivating there?
A. Yes; I saw people there, but I don't know their names.
Q. How far south did they cultivate; how many arpents south?
A. Well, my dear sir, I can't tell you how many.
Q. You recollect where Prairie Des Noyes was?
A. Yes, indeed.
Q. Did they cultivate as far south from Provenchere as the Prairie Des Noyes?
A. I believe just as high as he was, sir.
Q. Did you ever know a man named Francis Corneau?
A. Yes, sir.
Q. Do you recollect whether he ever cultivated any land near where Prevenchere was?
A. I believe he did; I am not sure.
Q. Before the change of government?
A. Yes, sir.
318 Q. Do you know how much Corneau cultivated in width?
A. No, sir.
Q. Can you say whether one or two arpents wide? How wide was the land that Corneau cultivated south of Provenchere?
A. I can't tell you.
Q. You can't tell whether one or two arpents?
A. One.
Q. Did you say Corneau was south of Provenchere?
A. Yes.
Q. Did he adjoin Provenchere or not?
A. I don't know.
Q. Did his land lie next to Provenchere?
A. Yes, sir; I believe it did. You know I took no notice about that.
Q. You saw him cultivate before the change of government?
A. Yes, sir; before the change of government.
Q. Did you ever know a man by the name of Berger—Pierre Berger?
A. Yes; I believe I did know Mr. Berger.
Q. Did you ever see him cultivate any land there before the change of government, south of Corneau?
A. No, sir.
Q. But you knew Mr. Berger?
A. I knew him well.
Q. Did you know whether he had a lot there?
A. Yes, sir.
Q. Where was his lot?
A. Well, I can't tell where his lot was.

Q. But you know he had a lot there before the change of government?

A. Yes, sir.

Q. Did you ever see him on the lot there?

A. No, sir.

Q. Did you ever see any of his servants on it?

A. No, sir; I didn't see none of the servants on it.

Q. How did you know he had a lot? How did you find that out?

A. Well, children playing there—picking hazel nuts and running around.

Q. How did you know the time when the government was changed?

A. I remember it well, sir. I was about 10 or 11 years old when they took the country. I was standing on the porch and looking at it.

319 Q. Did you see the flags of the Spanish government taken down?

A. Yes, indeed, and I saw the American flags put up, and I saw the commandant give up the bunch of keys there. When he made the cross I was standing right there looking at them.

Q. And a great many other people were there, too?

A. A great many, sir. I cried enough that day; I didn't know what was to happen.

Q. You thought you had lost your king?

A. Yes, sir, I thought we had lost our king. I saw them take the Spanish flag down and I saw the American flag there—a silk flag—and then old Mr. De Lassus, he took the bunch of keys and gave them to Col. Stoddard.

Cross-examination by Mr. MORRISSON, counsel for plaintiffs:

Q. Do you know Dick Dowling?

A. Yes, sir.

Q. How long have you known him?

A. When he first came here.

Q. Were you born the slave of Chouteau?

A. No, sir; I was the slave of Clamorgan.

Q. You were born here?

A. Yes, sir.

Q. What did you say your name is?

A. Therese.

Q. Therese what?

A. Creveia.

Q. You don't recollect the year you were born?

A. No, but I was christened.

Q. Are you certain? Do you swear certainly, from your own recollection, that when you were ten years old that Provenchere ploughed the ground south of the Marie spring?

A. Yes, sir.

Q. You are certain of that?

A. Yes, sir.

Q. And not north of it?
A. No, sir.
Q. How far was he from the Marie spring?
A. I can't tell you how far.
320 Q. When did Dick Dowling first go to see you to come as a witness in this case?
A. I am always at his house or his wife's.
Q. Do you live at Dowling's?
A. No, sir; I don't live there; I live on 7th street—7th and Rutgers.
Q. Has he not talked to you about where Provenchere and Boise lived?
A. No, sir.
Q. Did you ever tell him that Provenchere lived south or cultivated land south of the Marie spring?
A. No, sir.
Q. You never told him that?
A. No, sir.
Q. Did he ever ask you?
A. He never asked me nothing about it.
Q. Did he ever ask you where Provenchere's cultivation was?
A. No, sir.
Q. Did he ever ask you where Barcela's cultivation was?
A. No, sir.
Q. Did he ever ask you where Corneau's was?
A. No, sir.
Q. Did he ever ask you where Bouis' was?
A. No, sir.
Q. Did he ever ask you to come here as a witness?
A. I believe he did last week.
Q. And without knowing what you were going to say?
A. No, sir; he didn't know; only knew what I saw myself. I used to wash and get water out of the spring.
Q. How did you happen to go out in a buggy with Cozens, who went after you?
A. I don't know.
Q. Was Dowling with you?
A. No, sir.
Q. You say you never have talked to him?
A. Never talked with Dowling at all on this subject.
Q. Who summoned you?
A. I don't know who summoned me.
Q. Who called you to come as a witness?
A. I believe Mr. Dowling did; I don't know.
Q. How far south of the Hammond spring did Provenchere
321 cultivate the land?
A. Well, sir, I don't know how far. The Hammond spring was right across the place, about one hundred yards south of the spring.
Q. East of the spring or west of the spring?
A. South.

Q. In what direction is south from here?
A. Oh, here I can't tell you, but there I know.
Q. Did you ever know Corneau to cultivate land out there?
A. Yes, sir.
Q. Did Corneau cultivate south of Provenchere?
A. I don't know which one of the two, but I know Corneau.
Q. You don't know whether he was south or north?
A. I don't know if Corneau did or Provenchere. I can't tell which one.
Q. You don't know how many arpens wide Corneau cultivated?
A. No, indeed; I didn't take notice of those things.
Q. You only saw them there at work?
A. Yes, sir.
Q. What were you doing out there in 1803 or 1804, before the change of government?
A. We were all playing children, going out hunting blackberries, hazel nuts, and everything.
Q. Did Cabanne live there then?
A. I believe so at the time. I don't know, though, at the time.
Q. You don't know whether Cabanne lived out there or not?
A. No, sir.
Q. Have you ever been from Cabanne's house, on the road south here, at an early day?
A. Yes, sir.
Q. How long ago?
A. Oh, that has been better than twenty years ago.
Q. Didn't you go on that road over fifty years ago?
A. Yes, over fifty years ago.
Q. When you came over that road did that road cross over the ground that Provenchere and Corneau cultivated?
A. Yes, sir. That is not the same road now. I don't remember that. The Cabanne road went that way; Cabanne lived here (indicating).

Q. Have you been from the Cabanne house, fifty years ago, 322 past this Marie spring?
A. Yes, sir.

Q. And in going to that house to the Marie spring did you cross over the land that you say was cultivated by Provenchere and Boise?
A. Yes, sir.
Q. You crossed over it, did you?
A. Yes, sir.
Q. Did you ever know a man named La Croix out there?
A. Certainly; yes.
Q. Where did he cultivate?
A. I don't know where he cultivated, but I know him.
Q. Did he live out there or cultivate anything there?
A. Yes, sir.
Q. Are you certain, in going from Cabanne's, up that road, to the Hammond spring, you crossed over the ground here that Provenchere and Boise cultivated?

A. Yes, sir.

By Mr. HILL:

Q. Did you also pass over part of the land that Corneau cultivated on that road?

A. Yes, sir.

By Mr. MORRISON: Where did your master live prior to the change of government?

A. Clamorgan. I had nothing to do with him. I stayed with Chouteau, right opposite the Government house, because it was his property, and Mrs. Chouteau.

Q. What part of the city was that—in what part of the town?

A. Where the old market was, on the right-hand side.

Q. How far out was it from there to this ground that you speak of—how many miles?

A. Well, sir, I don't know how many miles. I never knew that.

Q. You used to go out there to play?

A. Yes, sir; used to go out there to play.

Q. Wasn't the Indians pretty bad out there?

A. Plenty.

Q. And bad?

A. Yes, sir; and bad.

Q. Did the Indians run you in ever?

A. Yes, sir.

323 Testimony of Pierre Grinnell in words and figures following:

Defendant's counsel next called as a witness PIERRE GRINNELL, of lawful age, who, being sworn, testified as follows:

Examined by Mr. Hill, W. H. Cozens being sworn as an interpreter:

Q. How old are you?

INTERPRETER: He is 79 on the 7th of the coming April.

Q. Where were you born?

A. Vincennes, on the Wabash river.

Q. How long have you been in St. Louis?

A. Since he was three months old. He was of the age of three months when he came here and he has been here ever since.

Q. Has he been living in St. Louis ever since?

A. Yes, sir.

Q. Did you know the inhabitants of St. Louis in the ancient times?

A. Yes; he knew the people of the village of St. Louis.

Q. Did he know John Baptiste Provenchere?

A. Yes, sir.

Q. Did he marry the widow of Charles Bisette?

A. He did.

Q. Did Provenchere live in St. Louis?

A. Yes, sir; on Second street.

Q. Did you ever know Francis Corneau?
A. No.
Q. Did you ever know his widow?
A. No.
Q. Or any of his family?
A. No; he says not.
Q. Did you know a man named Alexis Marie?
A. No; he did not.
Q. Did you Vincent Boise?
A. Yes, sir; he did.
Q. Did he live in St. Louis?
A. He lived on Main street, in St. Louis.
Q. Did he ever know Berger?
A. No.
Q. Do you remember the Cul-de-Sac Grand Prairie common fields?
Q. He knew the locality, he says.
Q. Did he know the lots lying between Chouteau mill tract and the Cabanne place?
A. He knew the land, but he didn't know the lots. He knows the territory, but he didn't know the lots.
Q. How old were you when you first went on the Cul-de-Sac Grand Prairie common fields?
A. About 15 years old, more or less.
Q. Do you know where Vincent Boise was cultivating?
A. He says he knew Mr. Andrew Boise cultivated the land, but he didn't know the father cultivated the land. He knew
324 Andrew. He saw him cultivating the land, but he never was on the property.
Q. Does he know where the land is now? Could he point it out?
A. Yes, sir.
Q. Did he go out there last Monday with Mr. Cozens and Mr. Collins?
A. Yes, sir; he says he was out with me last Monday.
Q. Was Mr. Collins out there also?
A. Yes, sir; both.
Q. Did you point out where the land cultivated by Boise was situated?
A. He says he showed me land near the springs, but he didn't show me where the house was because that was too far away from where we stood—that is, the house is towards the east this way some 15 to 20 arpens.
Q. Of whom?
A. Bouise; he pointed to the place where the house stood.
Q. Did you see him point?
Mr. COZENS: Yes, sir; I did.
Q. Where did Bouise cultivate with reference to that Alexis Marie spring, afterwards known as the Hammond spring?
A. East of the spring—the Marie spring—northeast.
Q. Did you point out to Mr. Cozens where the house of Bouise was situated on Monday last when you went out on the ground?

A. No; he says he didn't show me the place of the house because I didn't ask it. He said before he pointed out the locality and didn't go to it.

Q. Did you point to it so that Mr. Cozzens could see the place you pointed out?

A. He says he didn't point the place out to me because I didn't ask him for that particular place. He says he did not point any place out that I did not ask him to.

Q. Now, ask him if he pointed out the place on the ground where Bouis cultivated—in your presence if he pointed out to you the place where he cultivated.

A. No; he says when he stood at the Marie springs he then
325 pointed out to me the land that was cultivated by Bouis, but did not point out the location of the house.

Q. Now, let me ask how far north of the spring was the land of Bouis that he pointed out to you?

A. North?

Q. Yes; or east-northeast?

A. He didn't measure the distance.

Q. About how far?

A. He says he don't know; about seven or eight or fifteen arpens east of the spring of Marie.

Mr. MORRISON: East or northeast?

A. Northeast.

Q. From seven to fifteen arpens?

A. More or less.

Mr. HILL: After you were at the Marie spring with Cozzens and Collins, did you go to any other place after you went to the Marie spring?

A. He says after we left the Marie spring he went then to the road that run to Cabanne's to the northward of the Marie spring; he went to the road that leads to Cabanne's to the north of the spring.

Q. Now, ask him where the old road run with reference to the cultivation of the Bouis, the old road that run from the town to Cabanne from that field, if it run south of Bouis' cultivation, or from Philipson's cultivation.

A. INTERPRETER: He says he calls the road to St. Charles; he says it crossed diagonally in that direction from the Bouis.

The WITNESS: When we started from St. Charles road, you don't understand; when we started from St. Charles road——

Mr. HILL: Let him explain in French.

INTERPRETER: He says when he got into his wagon to go to Mr. Cabann's that the road travelled across the land of Bouis and crosswise.

Q. When he came to Bouis' house, which side was the road on, south or north?

A. He says at that time he didn't know that Bouis had a house there.

Q. He means now when he was 15 years old?

326 A. When he was 15 years old he never knew of any house there.

Q. Which way did the road run? In what direction did the road run? In what direction did the road run, east or west, or how?

A. He says the road run every way.

Q. But this particular road that traversed across Bouis' lot, which way did it run, to the west or southwest, or how?

A. He says it run diagonally across the land.

Mr. HILL: It run over to the west, if I understand it.

INTERPRETER: He says he don't know whether it was on the line of the land or how it was, but ran across there.

Q. Did he see any cultivation there by Philipson?

A. No.

Q. Did he ever know Simon Philipson?

A. He says he knew him.

Q. Does he know whether he had land there or not?

A. He don't know that he had land.

Q. Does he recollect of seeing what was called the old furrows that separated the cultivations of those lots near Bouis?

A. He says he saw east and west directions to the north of Basinette?

Q. Did he ever see any lines of cultivation south of Basinette?

A. He says he don't know.

Mr. MORISON: He says there may have been, but he never saw them.

By Mr. HILL: Did he ever go through there except when he went through with his wagon or horse?

A. Every way.

Q. Do you know where the Corneau springs are?

A. He says yes, and he showed them to me last Monday.

Q. Did he ever see any signs of cultivation in the neighborhood of the Corneau springs?

A. No.

Q. Or near there?

A. He does not.

Q. Which side of the Hammond spring did this old road run?

A. To Cabanne's; it went on the south.

Q. To the King's highway which way did it go? Was there any road to the north of this spring?

A. Yes; he says same as pointed to me the other day.

327 Q. Did you point out to Mr. Cozzens the direction of that old road when you were on the ground last Monday?

A. Yes. He says he showed to me last Monday the road and its direction.

Q. And that is the way the road ran in old times that he pointed out to you?

A. Yes, sir; that was the road he travelled then.

Q. Does he recollect the Widow Beaulieu lake?

A. Yes, sir; he does.

Q. Which side of the lake of the Widow Beaulieu did this road run that went to Cabanne?

A. He says it went both sides and surrounded it. (Plat shown to witness and point marked "Hammond spring" designated.)

Q. Now, where was Bouis' cultivation when you saw it?

A. He says he cannot understand the plat. He says he could not understand the plat the other day.

Q. You state that you did not know Corneau?

A. No.

Q. Or Berger?

A. No.

Testimony of Francis Robadeaux in words and figures following:

FRANCIS ROBADEAUX, being duly sworn, testified as follows:

Examined by Mr. HILL:

Q. How old are you?

A. I am 68.

Q. Where were you born?

A. In St. Louis.

Q. Did you know these field lots between Cabanne's farm and the old Chouteau mill tract?

A. Yes, sir; I know some of them.

Q. And north of the mill tract?

A. I knew them at one time. I was raised right there.

Q. Where?

A. Right on the River des Peres.

Q. Out beyond, in the neighborhood of Cabanne's farm?

A. Yes, sir; about 2 miles from Cabanne's farm.

Q. Have you been over that property when a young man?

A. I was there when I was seven years old; I went there
328 when I was seven years old and lived there until I was 21.

Q. Did you know such a man as Bouis?

A. I knew Bouis. I recollect him very well.

Q. How long ago?

A. Well, I cannot say. It has been 30 or 40 years ago, I expect.

Q. How old were you when you first knew Bouis?

A. About 12 or 15, I suppose; around there.

Q. Did you know a man named Simon Philipson?

A. No.

Q. How old were you when you first knew Philipson?

A. I don't believe I did. I do not recollect him; the name sounds familiar to me, but I don't remember.

Q. What do you say?

A. I say I don't think I remember him at all.

Q. You don't remember him by his name?

A. No, sir; not by that name.

Q. Did you ever see Bouise cultivating any land?

A. Yes, sir; I saw Bouis plow there.

Q. Where was that land?

A. By the Marie spring.
Q. Which way did it run?
A. On the east side of the spring.
Q. Which way did it run, east or west?
A. It run in that way; up and down.
Q. East and west?
A. Yes, sir.
Q. Which side of the Marie spring; on that side of the spring?
Mr. JEWETT: South or north do you mean?
A. South.

Q. How many arpens wide had Bouise there?
A. 6, 7; probably 8 of them.
By Mr. MORRISON: Where that was located, you mean it run south or north or east and west?
A. East and west.
By Mr. HILL: How wide was the lot he had? Do you remember whether 2 by 40 or 1 by 40 or 3 by 40?
A. I cannot say.
Q. Can you tell how wide it was between his outside fur-
329 rows, whether one or two arpens?
A. It must have been two arpens and over.
Q. Did Boise have any house there?
A. Yes, sir.
Q. How far was that from the spring called the Marie spring?
A. Not very far; I suppose a little over the length of this house; probably about the length of this house on the hill.
Q. Did you ever know a man named Philipson, who lived in the Delisle house?
A. Yes, sir; I was raised in the family of Delisle.
Q. Did you ever see a man named Philipson there?
A. Yes, sir.
Q. Now, you speak of the Boise cultivation. That included Marie spring?
A. Yes, sir.
Mr. JEWETT: He don't know that it included Marie spring.
The WITNESS: I don't know that it included the Marie spring. It was right south of it—right by it.
Q. Do you know whether that is the old Alexis Marie lot sold to Chouteau and then to Boise?
A. I don't know anything about it.
Q. You know that Boise cultivated this side of the Marie spring?
A. Yes, sir.
Q. And your impression was that the Marie spring was on the north side of the Bouse cultivation or the south?
A. On the north side of the spring is, I think, to the best of my knowledge.
Q. Do you know anything about the Philipson lot?
A. No, sir.
Q. Did you ever see any cultivation next south of the Boise lot?
A. Yes, sir; the cultivation there; but who cultivated I cannot say.

Q. You saw a cultivation there?
A. Yes, sir.
Q. To what extent and how wide was that lot—one to three arpens wide or more or less?
A. I cannot recollect.
Q. Of the same depth as the Boise lot?
330 A. All about the same depth; but whether they were of the same width I cannot say; to the best of my recollection, all cultivated about the same.
Q. Do you recollect which way these furrows — that were between these cultivations south of Boise lot and the Boise lot?
A. They were all run east and west that I saw.
Q. Do you know which way is east from here?
A. That is west (indicating).
Q. Did you see any other furrows or ancient cultivations there north or south of the Boise and this other lot adjoining it?
A. I saw so many I can't recollect.
Q. Did you see a great many furrows?
A. A great many. I have hunted there, strawberries and blackberries, over those lots hundreds of times.
Q. When you were a boy?
A. Yes, sir.
Q. How many people in all have you ever seen cultivate these lots out there?
A. 5 or 6, to my recollection.
Q. In different places?
A. Yes, sir.
Q. Can you recollect their names?
A. No; I cannot recollect their names.
Q. Were any of them Provenchere?
A. Well, I don't recollect.
Q. Old Jean Baptiste Provenchere?
A. I don't recollect Provenchere very well. I have heard speak of him, but I don't recollect him.
Q. Do you know where his lot was?
A. No; I cannot say where it was.
Q. You don't know it was the lot adjoining Boise?
A. No; I don't know that. It may have been; I cannot say.
Q. This cultivation that was on the lot adjoining the Boise lot—how large was it and what kind of cultivation? Was it larger or smaller than the Boise cultivation?
A. About the same size.
331 Q. Was there any house on that lot?
A. Yes, sir; a cabin on it.
Q. How far was that cabin from the Marie spring?
A. A good piece.
Q. How far was it from the Corneau spring?
A. It was between there and the Corneau spring.
Q. Between the Marie and the Corneau spring?
A. Yes, sir; down towards kind of a sink hole.
Q. Towards the branch?

A. Yes, sir; there was house there, I recollect well.
Q. That is a small cabin?
A. Yes, sir
Q. Did you ever see any person living in that cabin?
A. Oh, yes; people lived in it.
Q. You don't know whether Philipson had them for his tenants or not?
A. No, sir; I cannot tell you. I cannot recollect it; it might have been.
Q. Have you any recollection whether Philipson claimed that lot at that place?
A. No; I don't recollect who claimed that, only I have seen people there; that is all I know.
Q. Do you recollect this old road that they talked about, these other witnesses, that ran between the lots that were cultivated?
Mr. MORISSON: No witnesses have spoken about such a road.
By Mr. HILL: Diagonally across?
A. I knew the old road that we used to go out to go in town.
Mr. MORISSON: Going to Cabanne's?
A. Yes, sir.
By Mr. HILL: Where was that road, with reference to these cultivations?
A. North of Boise.
Q. How near to Boise?
A. Very close to his house.
Q. Which side of his house did the road run?
A. On the north side.
Q. Very close?
A. Yes, sir.
332 Q. Which side of the Widow Beaulieu lake did it run?
A. It run on the same side of the Beaulieu; turned that way (indicating), round a pond.
Q. It turned round the Beaulieu pond?
A. Yes, sir; they call it a lake now. In the old time it was a pond.
Q. The Widow Beaulieu's pond?
A. Yes, sir; the Widow Beaulieu's pond.
Q. Did not that road run north of the Widow Beaulieu's pond?
A. Yes, sir; it run both sides.
Q. Right close to the Marie spring?
Mr. JEWETT: Don't lead.
Mr. HILL: How near to the Marie spring did it run?
A. The old road?
Q. Yes, sir.
A. Well, the Marie spring ran by his house a little further, and it came in on the rise of the hill; came in near the Marie spring.
Q. How near was the old road to the Marie spring on the north side?
A. It is the one I am talking about.
Q. How near was it?
A. Probably the length of this house; maybe not so long.

Q. You mean the road was the length of the——
A. The road from the house.
Q. And north of the Marie spring?
A. Yes, sir.
Q. How far north was it from the Marie spring?
A. The length of this room, maybe, on the north side.
Mr. HILL: 65 feet long?
The WITNESS: It came out by the Boise house near the fence.
Q. Did that road branch down to the south of the spring, the Marie spring? Did it fork and go both sides of the spring?
A. It forked before it got to the spring.
Q. And it went both sides?
A. Yes, sir.
Q. And then came together on the other side, west?
A. Then came together again by the pond.
Q. When it came into one road again how far did it run without forking?
A. It ran away out in the prairie, out to Cabanne's.
333 Q. And one road went south of the Beaulieu lake and the other north?
A. One went north that way and the other that way (indicating).
Q. About how old were you when you first saw these cultivations of Boise and these other cultivations south of Boise and south of this road?
A. I may have been at the age of 12 or 13.
Q. And you were born in 1807?
Mr. MORISSON: How old are you?
A. 68.
By Mr. HILL: For how long a time did you see these cultavations?

Mr. HILL: I am trying to prove the cultivation of 1803.
Mr. MORISSON: What are you trying to prove?
Mr. HILL: I am trying to locate this sheriff's deed.
Mr. MORISSON: Oh, you are making the Philipson tract the south boundary?

Mr. HILL: How long did you see these cultivations in that manner year after year?
A. I cannot say. I cannot remember.
Q. More or less that 10 *by* 20?
A. More than 8 or 9 I saw them.
Q. Don't you remember Bouse to have been there up to 1830?
A. I cannot tell that.
The COURT: You mean the Vincente Bouis?
The WITNESS: I mean Andrew Bouis, born on Main street. I knew him as well as myself.
Q. Did you know that Philipson who lived in Delisle's house?
A. Yes, sir.
Q. How long did you know him?
A. I cannot tell.
Q. A great many years, didn't you?

Mr. JEWETT: No; he didn't say that. I don't want you to put words in his mouth.

The WITNESS: I cannot say how long.
Q. Can you tell whether 10 or 20 years you knew him?
A. That long, at least.
Q. Do you recollect when Philipson died?
A. Yes, sir.
Q. Didn't you go to his funeral?
A. Yes, sir.
334 Q. Now, can you tell the court how many years ago you knew Philipson?
A. No, sir; I cannot.
Q. From the time you were a boy until you were a grown man?
A. I cannot recollect exactly how long I knew him. I can't tell.
Q. Now, didn't you know him from the time you were a boy until you were a grown man?
A. I knew him when a boy.
Q. You knew him when he was a boy?
A. Yes, sir.
Q. Now, didn't you go out with Philipson to that very land once when you were about 25 years old? Do you recollect of going out with Philipson on that prairie?
A. I cannot recollect that.
Q. Well, I will put the question directly. Do you not recollect that Philipson did cultivate that land south of Boise there?
Mr. JEWETT: He said several times he did not.
Mr. HILL: See if you cannot refresh your memory sufficient to recollect that?
Mr. MORRISSON: A vertiable fact.
The WITNESS: I will not say anything I don't know. I cannot say. I don't recollect that. I cannot swear to it.
Q. Do you not recollect of going out there with Philipson when you were about 25 years old?
A. I have been out there dozens of times with him.
Q. Now, tell the court when Philipson went out with you there dozens of times whether he went out on this land south of Boise with you to that cabin.
A. We went all over the land.
Q. Where the cabin was?
A. Yes, sir; where the cabin and Boise, too.
Q. What business had Philipson out there?
A. I cannot recollect. He had people working out there for him.
Q. Where — these people working?
A. Living in the old cabin.
335 Q. Immediately south of this Boise tract?
A. Yes, sir.

By Mr. JEWETT: You made him swear to what he positively denied at first; he positively said that he didn't know any man worked for him previous to this.

Mr. HILL: Let me know whether you understood my question. Did I understand you as saying that the men that lived in the cabin south of Boise worked there?

A. He worked.

Q. Did you go with Philipson to see about the working of these men on that place?

A. He went along and I went along with him; what his business was I can't say.

Q. What did you see him do when he went out with you?

A. I saw him speaking to the men. I was running around and not noticing what he was doing, though I saw him stop and speak with men.

Q. Do you recollect the names of these men?

A. I did know them, but I can't recollect now. I have forgotten. I knowed on- of them.

—. Were they white or black men?

A. White men.

Q. Did they have any female there, or woman?

A. One woman there that I saw.

Q. Do you know who paid those men their wages out there?

A. No, sir. I know they were working for that men.

Q. Working for whom?

A. Working for Philipson, but who paid them I can't say.

Q. How many years were they working for Philipson there?

A. I can't tell.

Q. About how many?

A. Maybe two or three. I don't know.

Mr. MORRISSON: Or it may be ten?

The WITNESS: It may be ten. I can't say.

Cross-examination by Mr. MORRISSON, counsel for the plaintiffs:

Q. What year did you go out with Philipson?

A. I can't tell.

Q. Can you tell within five years of when it was?

336 A. No; I was a little boy.

Q. Can you tell whether it was in the spring, winter, or summer?

A. I never went in the winter. It was in the spring or summer.

Q. What did you go there for?

A. I went with him.

Q. What did Philipson do here then?

A. He was living at that house.

Q. How came it so hard for you to recollect there was such a man when you were so familiar as to be going out a dozen times with him?

A. I forgot these things. It is a long time ago, and you spring these questions now.

Q. But it is not too long ago for you to recollect that you went there?

A. No.

Q. And not too long for you to recollect that there were men on the ground working for Philipson?

A. No, sir; I recollect the men were working for Philipson.

Q. But can't give any reason for your not recollecting Philipson until your attention was called to him, when you say now that you had been there a dozen times?

A. I had forgotten the thing entirely. It all went out of my memory entirely, but come to put my memory to it I recollect that I lived in the same family with him.

Q. What was his first name?

A. Joe, I believe.

Q. You say you knew Vincent Bouis?

A. Yes.

Q. You knew him well?

A. I knew him well. Me and him were boys together. I mean the young one, not the old one. I have no recollection of the old one.

Q. Do you know of either of them or did you see either of them ever working on that ground or cultivating it before the 20th of December, 1803?

A. No; I can't tell.

Mr. HILL: He was born in 1807.

By Mr. MORRISSON:

Q. Did you ever know Dissela?

A. Yes, sir; I did.

337 Q. Do you know the tract of land that he bought there?

A. I have heard of it. I don't know the tract.

Q. Do you know where it was located?

A. No, sir; I don't know where it was located. In fact, I heard him say himself that he bought a tract out there. You mean this Dissela that lived in the city? I knew him.

Q. Do you know where he lived in the country there?

A. No.

Q. You don't know whether he bought the Boise tract of land or not, and took possession of it?

A. No, sir; I don't recollect that at all. I know he moved in the country, but where I can't tell.

Q. Did you ever hear of Bofice?

A. Yes, sir; I used to know him.

Q. Did you ever hear of Bofice's widow?

A. No.

Q. You don't know who Dissela married?

A. Dissela married a widow, I know. I believe it was the widow Bofice. I have seen her a thousand times, but had no acquaintance with her; him I was personally acquainted with, and his lady I have seen a thousand times.

Q. Do you know whether Dissela occupied or lived on the land that Bofice occupied there in the prairie?

A. Oh, no; I don't know that. He used to live near his wife's property.

Q. Now, in what year did you see Boise cultivate the land?

A. I can't tell you that; no date of it, but I don't know anything about it except what I tell you what I seen; that is all.

Q. Who went to get you to come here as a witness?

A. Well, nobody particularly. Mr. Dowling met me one day on the street, and he asked me about such things, and I told him.

Q. Did not Dowling go out to get you to come in?

A. I live in the city. I don't live in the country now.

Q. Wasn't Dowling at your house hunting you up before the suit?

A. No, sir; never was in my house that I know of.

Q. Did he go to your door and inquire for you at home?

A. Nobody there. I have a room where I sleep, and I have
338 the key in my pocket, and anybody to go there won't see me. They will see nobody there.

Q. Is you- room near Hortese?

A. No, sir; I am rooming on Fifth, near the corner of Poplar and Fifth.

Q. It was Dowling first called on you and interrogated you about those things, and stated that he wanted you as a witness, was it?

A. Dowling asked me if I had any recollection of the place, and I told him yes; that I had not been over the ground for a number of years, and I went over the ground when I got there, and what I knew I pointed out.

Mr. HILL: Who to?

The WITNESS: I pointed it out to Mr. Cozzens and one or two gentlemen that were along. I pointed out where I recollected the house stood and where the field was and where I had seen cultivation.

By Mr. MORRISSON: That is the house of this young Vincent Boise?

A. Yes, sir.

By Mr. HILL:

Q. Did you point out the cabin that Philipson's men were on?

A. Yes.

By Mr. MORRISSON:

Q. Which way did you point from the Bouse house to Philipson's? Where was the Philipson house from Marie spring?

A. Well, I pointed to the east, of course.

Q. That is, east from the spring, you mean?

A. From the spring—from the Marie spring.

Q. North and east, didn't you point?

A. If you call that north (indicating), that is north. There is the Marie spring here, and I pointed out there (indicating).

Q. You pointed south, did you?

A. South, of course.

Q. You said you pointed east just now?
A. South from the spring; to the left of the spring.
Q. Was the witness who last testified before you out there at the same time with you?
A. Yes.
—. Then you and he did not point in the same direction?
A. I don't know.
339 Q. Didn't he point to the north and east for the Boise land, and point to the north and east of the spring?
A. Not as I know of.
Q. Didn't you hear him swear that he did awhile ago?
A. I heard him swear.
Q. Didn't he, while on the ground, point to the north and east of the spring for the Boise land?
A. I am not pointing to the Boise land, but where the Boise house stood.
Q. Didn't he point north and east for the Boise house from the spring?
A. I don't know. I pointed where the house was.
Q. You pointed south of the Boise land?
A. From the spring.
Q. You did not see the other witness point north and east?
A. I did not notice.

Next the testimony of Louis Charleveix, page 97; next the testimony of Sullivan Blood, page 151.

Testimony of L. Charleveix.

Defendant's counsel next called as a witness LOUIS CARLEVOIS, who, being duly sworn, testified as follows:

Direct examination by Mr. HILL:

Q. What is your age?
A. Seventy.
Q. Where were you born?
A. In St. Louis.
Q. Did you know this Andrew Vincent Boise tract spoken of by the witnesses here?
A. I knew Andrew Vincent, the son of old Mr. Vincent. He was living on the place in 1828, where he died.
Q. Do you recollect anything about his cultivation?
A. No, sir; nothing about the cultivation.
Q. Do you know anything about there being a house there?
A. Yes, sir; there was a house there. He died there.
Q. Is that all you know about him—that he died in the house there? Did they live there any time?
A. They lived there some time; how long I don't know.
340 I moved there that year. I moved to Rock Spring in 1828, and he died shortly afterwards.
Q. And you never saw them living there after you went out to that neighborhood?

A. No, sir; I did not.
Q. And you moved to that neighborhood in 1828?
A. Yes, sir.
Q. And you were living there then?
A. Yes, sir.
Q. Was the house new or old then?
A. It was not a new house; it looked like a house that had been built for some years; how long before I can't tell.
Q. How was it with regard to the improvements around it?
A. Not much improvements.
Q. Any fencing?
A. A very small fence might have been; I can't state.
Q. Do you know how large the improvement extended?
A. The improvements did not seem to me to be very large, according to my recollection at the time; not more than half an acre, or an acre at the most.
Q. Did you see any evidence of plowing?
A. No, sir; there might have been, but I saw none.
Q. When you went there in 1828 you saw nothing more than the enclosure?
A. I happened to pass by that way, and I understood that they were living there.
Q. He was the son of whom?
A. The son of old man Vincent. Andrew Vincent was a man then, I presume, at the time he died, some forty-five or fifty years. He was a school-master. He taught school. I knew him as well as I know myself. I don't remember the old man, but I knew the whole family, though.
Q. Now on which side of the house did the road run?
A. The road run south of the house.
Q. You speak of the road from Cabanne's?
A. Yes, sir; the road leading from St. Louis to Cabanne's. It runs south and runs now pretty near in the same direction
341 as it did then, which I pointed out to Mr. Cozzens and stated to him this road runs pretty near in the same direction that the old road run there.

By Mr. MORRISSON:

Q. That is now Lindell avenue?
A. Yes; that old road.
Mr. HILL: He don't say Lindell avenue.
The WITNESS: No; I am speaking of the old road.

By Mr. HILL:

Q. Did you point out to Mr. Cozzens the line of the old road here last Monday?
A. I did.
Q. In the presence of these other witnesses?
A. Yes; in the presence of Mr. Cozzens and other gentlemen.
Q. Mr. Collins?
A. Mr. Collins was there. And where the house of Mr. Vincent

Boise stood there is no such thing; it looks very unlike it now. It don't look like the same place, and I wouldn't know myself where I was, it has been so much changed and cut up.

Q. Which side of the Marie spring, or Hammond spring, did this road run?

A. On the north.

Q. Did any road run south of the Hammond spring?

A. Not directly there was not; not to my knowledge. This road went up the hill here where the old house stood, and sort of inclined on the south and run up to Mr. Cabanne's pond, that you call the Cabanne lake, and run to Cabanne's, and there was a road on the south that came along and run along the fence, and you go through down towards the Rock spring. That was the road.

Q. Is the Hammond spring and the Marie spring one and the same spring?

A. We used to call the Marie spring the Hammond spring. The other stands a little further east and west; and one runs southeast. There are some four or five springs there together, very near.

Q. Did you ever see the Hammond house?

A. Yes, sir.

Q. When did you first see that?

A. The first time I saw that house I believe was in 1821 or 1822.

Q. Was that then a new or old house when you first saw it?

342 A. I can't say. I simply passed by; I paid no attention to it.

Q. On which side of the Hammond house did this road run?

A. On the north side.

Q. State to the court whether that road passed up to the north in order to avoid the low *of* ground at the Marie or Hammond spring or not.

A. The road led directly from the city; it had nothing to do with the lower land, because there was no such thing as a road from that road down to what we may call the Manchester road now. I don't know of any road that went across there at all. This road went directly west—this road on the east went directly west, and there was no road, to my recollection, that run east and west.

Q. Which way?

A. To the north—to the south, I mean.

Q. But the road that run by Boise's lot run east and west?

A. The other was east and west, running right from the city north of the Hammond spring.

Q. Boise's house was north of the Hammond spring?

A. Northeast about a quarter of a mile, I presume. (Map shown to witness.) I don't care about the map. I know better than the map. I lived there two years. I had several visits with Mr. Lindell. Mr. Lindell had possession of it at that time; that was in 1820, and I believe I got it in 1825; then I was there when he planted his orchard right south of the house—south of the old Hammond house.

Mr. MORRISSON: That was the tract of land he got of Boise.

By Mr. HILL:

Q. I wish to know in what direction this road run that passed along north of Boise's house.

A. It run east and west. Do you want me to repeat it again? It run east and west, and south of Boise's house and north of Hammond's house.

Q. South of Boise and north of Hammond?

A. Yes, sir.

Q. How far did that road continue in that course, east and west, until it forked?

A. The road leaned towards the south after you got above on the hill.

343 Q. Above what?

A. Above the house—Hammond house. It went a little south like and running west to the pond—Cabanne's pond. It went to Cabanne's, and I don't believe the road went any further than Cabanne's place, and on to, maybe, a Mr. Forsythe. Mr. Forsythe—whether he lived there or not, that I can't say, but that is about as far as the road went. Then there was a branch that led to the St. Charles road. That—I never traveled it of any consequence, and I don't know how far it went.

Q. Now, I wish to know how long you knew Peter Lindell during his lifetime.

A. I have known Mr. Lindell, I should think—I must have known him in 1820. I think I knew him four or five years before he went out there.

Q. Do you know whether Peter Lindell ever went into possession of this property that you are talking about?

A. I told you that he had possession of that place in 1828.

By Mr. MORRISSON:

Q. Where the Hammond house stood?

A. Yes; and the orchard he planted there—that I know.

By Mr. HILL:

Q. That is south of the house?

A. Yes, sir.

Q. When did Lindell plant the orchard?

A. I think in 1828 or 1829.

Q. When he first came in there?

A. I can't recollect. He was there before I went there, and I went in 1828, and he had been there, I think, one or two years then.

Q. Have you observed Mr. Lindell's possession from that time—in 1828—down until his death?

A. No, sir.

Q. How long did you observe his possession out there?

A. I remained there two years, and from that time I don't
344 know that I ever was there. I went on some parts of the land—the eastern part of the land—for cattle, but I don't think I was as far back as the Hammond spring, not for thirty years.

Q. Who was in possession of the eastern part of the tract when you went there for cattle?

A. It was a gentleman named Fenn that rented the place as a dairy, and he had pastures that men could put cattle in them, and I went in there and bought cattle, and I understood it was in Fenn's pasture.

Q. Who did Fenn rent from?

A. I think of Lindell.

Q. Do you recollect whether his name was Wm. P. Fenn?

A. I think that was his name.

Q. How large was this Lindell farm that you saw Lindell in possession of?

A. Well, I can't say; it was very large.

Q. You know where the old Chouteau mill tract was, don't you?

A. Yes, sir; Mr. Lindell claimed from the Stoddard Addition up to the King's highway.

By Mr. MORRISSON:

Q. He claimed everything?

A. Mr. Lindell at one time offered me, if I wanted to fence in on the Stoddard Addition, up to where the present King's highway is. He offered to give me that for twenty years if I would put a fence around it.

By Mr. HILL:

Q. How many years ago was that?

A. I think it was in 1835 or 1840.

Q. Now, do you know how far the Lindell land extended on the south line? You know where the King's highway is and where the Gratiot league square is?

A. Yes, sir; I am living on the Gratiot league.

345 Q. How far did the Lindell line run towards the east from there?

A. That is a good many miles; a good many miles from where I lived; must be four miles from your land (pointing to Mr. Morrisson).

Mr. MORRISSON: I don't know what is mine.

The WITNESS: Well, I do.

By Mr. HILL:

Q. You know where Col. Morrisson's land is, or his wife's land?

A. Yes; all that belongs to the wife belongs to the husband, or ought to.

Q. Who bounded Lindell on the west? You know where Cabanne's farm is?

A. On the west?

Q. Yes.

A. King's highway.

Q. Cabanne is on King's highway, on the other side?

A. Yes.

Q. Did Lindell's land extend from King's highway to the Stoddard Addition?

A. Yes.

Q. That would be Garrison avenue now?

A. Yes, sir.

Q. How long do you know Mr. Lindell to have been in possession of that property there in person or by his tenants?

A. I told you that.

Q. From 1828?

A. Yes, sir.

Q. Do you know when he died, in October, 1861?

A. I did not take any notice of his death.

Q. Was he in possession until his death?

A. I believe he was.

Q. Did you ever know anybody else to be in there but Lindell?

A. None that I know of.

Q. Do you know how far north he extended—to the Olive-street road?

A. I believe so.

Q. And east—that part of the tract that extended to the Olive-street road—do you know who was on his east—do you recollect Boise and Dissela?

346 A. That there is north, isn't it? Northeast—I call that north, anyway, from Lindell's tract that we are talking about—this land north of him; Bofice north of him. Dissela and Bofice are one, because Dissela married Bofice's widow.

Q. I wish to call your attention to this: Whether you know that the Hunot New Madrid location extended so far north to the Olive-street road that it was bounded on the east by these common-field lots of Boise and Dissela and others? Do you remember that and know anything about it?

A. No; I do not, sir. I don't wish to answer any question that I don't understand or know anything about. If any questions are asked me that I don't know, I will say "no."

Q. Do you recollect anything about any cultivation or cabin south of the Boise tract?

A. No, sir; I don't remember.

Q. In 1828—you don't remember?

A. No, sir; there was no such thing at that time. Whether there was any cabin on that land during that time—because I was on that land; it was in my sight all the time, and there was no cabin there, although I know there was an old mill there on that land; that I took some slabs out myself.

Q. Do you mean the old Anne Camp mill-dam?

A. Yes, sir; I merely took the slab out; that is all I can tell.

Cross-examination by Mr. JEWETT, counsel for the plaintiffs:

Q. How far northeast from the Hammond house did you say this Boise cultivated—Boise house was?

A. I said about a quarter of a mile.

Q. Was it nearly north or south east?

A. Northeast.

Q. Did the old road you speak of—which did it run nearest to—the Boise house or the Hammond spring?

A. Well, there was very little difference.

Q. Nearly between the two?

A. Yes, sir.

Q. You first knew that property earlier than 1828?

A. In 1822 I first knew it.

347 Q. When Hammond was occupying that house by the spring were you there then?

A. Yes, sir; there was an American family in his house then.

Q. When you first knew it?

A. Yes, sir; whether Hammond I can't say, or somebody else.

Q. There was an American family living there?

A. Yes, sir.

Q. When did you first know it as the Hammond spring? As early as 1822?

A. Yes, sir.

Q. At the time you first knew it, in 1822, Boise was living in this house northeast from that?

A. No; no house there in them times.

Q. Did not Boise build until after 1822?

A. Yes, sir.

Q. No house, then, at that time?

A. No, sir.

Q. Nobody occupying that land that you know of, where Boise built his house in 1822?

A. No; it was vacant.

Q. Do you remember when Boise first went there to get possession of that property?

A. No, sir; I was not there.

Q. Do you remember how early you first saw the Boise house there?

A. The first time I saw it, I have stated before, was the year 1828.

Q. How near the Hammond house was the orchard that Lindell planted?

A. It must be not less than two acres.

Q. Did it go right up to the house, or was there a little space between the house and the orchard?

A. A space between the house.

Q. The orchard was west or south of the house?

A. South.

Q. How much space; how far was the southern portion of the orchard from the house, the southern side of the orchard?

A. The orchard was planted on the south side of the ground of the place, but how near the house I can't tell.

Q. About—can you give some idea pretty near, how near

348 the orchard was to the house? How wide was his land south—more than four arpens wide?

A. Which?

Q. To the Boise, the Hammond house. (Map shown to the witness.)

—. ——.

Q. The Hammond spring is on the Conway tract; it is not on the Hunot tract, and I wish to know how near the house was to the orchard.

A. Well, sir, I think it must have been an arpen, anyway.

Q. Between the house and the orchard?

A. Yes, sir.

Q. Then the orchard extended how far south from that; for an arpen or more, or two of them?

A. Yes; two of them; pretty large arpens.

Q. How much was fenced when you first went there to live?

A. That was under fence where the orchard was.

Q. Was the Hammond house inclosed when you first went there?

A. Yes, sir.

Q. Then Mr. Lindell's possession was the Hammond house?

A. Yes, sir.

Q. Including the orchard?

A. Yes, sir.

Q. How far did Lindell's fence go north of Hammond's then at that time?

A. North?

Q. Did Lindell have any fence north of Hammond's house at that time?

A. Yes, sir.

Q. How far north was it inclosed of the Hammond house?

A. Not a great distance, because the road comes pretty near the house.

Q. It was fenced to the road?

A. Yes, sir.

Q. Which road was about half way between the Hammond house and what was afterwards the Boise house?

A. Yes, sir; the road which run up to Cabanne's run between the Hammond spring and the Boise house, but the house, of course; the land was inclosed in front and the road run between.

Q. The road run north of Lindell's fence then?

A. Yes, sir.

Q. When you first knew it?

A. Yes, sir.

Q. When you lived there what did you first live in—the Hammond house or some other place?

A. I lived at the Rock spring.

Q. How far south is that? You do not mean what we call the Rock spring in the valley now?

349 A. That is not the Rock spring; that *that* Rock spring is further west. The road by the cemetery is what we call the Rock spring.

Q. How far was the Rock spring you lived at from the Hammond house?

A. Three-quarters or half a mile.

Q. In what direction?

A. Northwest—that is, to go to the Hammond spring I would have to go northwest.

Q. You had to go northwest from your house, or if you were at the Hammond spring in what direction would you have to go to get to your house?

A. Southeast.

Q. If you would go southeast, then, of course, from your house you would go northwest to get to the Hammond house?

A. Yes, sir.

Q. At the time that Lindell offered to let you have that for twenty years if you would fence it how much of that ground south of the Hammond house, east of it and west of it, was fenced up?

A. That land laid east of it.

Q. How much of it was fenced up, I asked?

A. There was none fenced up at that time.

Q. Then the whole ground, except the Lindell inclosure, near the Hammond house, south, west, and east of it, was unfenced at that time?

A. At the Hammond house there was quite a good field, a pretty good inclosure, because he rented that house once to a man named Springfield to cultivate, and, of course, there was a good field, a good-sized inclosure.

Q. About what sized inclosure was it, to the best of your impression?

A. It must have been not less than fifteen or twenty acres.

Q. That lay east as well as west and north and south of the house, did it?

A. Yes, sir.

Q. All around it?

A. Yes, sir; and when Fenn had it it was all under cultivation.

Q. Fenn did not go there until what time—not until 1845, did he?

A. I don't know what time he went there, but it was enclosed then.

350 Q. He did not go there until 1846, did he?

A. I don't think he did; I don't know.

Q. Was there any more fence than you have spoken of—the several acres—before Fenn went there?

A. No; not that I know of.

Q. No fence except that field fenced up around the Hammond house until Fenn went there?

A. There couldn't have been less than twenty acres.

Q. Fenced around the Hammond house?

A. Yes, sir.

Q. On all sides of the Hammond house that is the fence, I understand, that Lindell had around his land until Fenn went there and fenced it up?

A. Yes, sir.

Q. Were you there when Robidoux was there with Mr. Cozzens and others?

A. Yes, sir; I was.

Q. Did you see Mr. Grinnell at the same time?

A. Yes, sir.

Q. You and Robidoux and Grinnell, and what other witnesses?

A. That old lady; we rode together in a hack.

Q. Have you any recollection of the direction Robidoux pointed from the Hammond spring that he pointed for the Boise house—in what direction he pointed out the Boise house?

A. I don't know as to Robidoux. I went there to point out to Mr. Cozzens, and it was with him with whom I talked, and Mr. Grinnell was along with me and we conversed together and talked about the matter.

Q. And you don't remember?

A. I knew Mr. Robidoux was back somewhere.

Q. But you don't remember which way Robidoux pointed for the Boise house?

A. No, sir.

Q. You pointed to Mr. Cozzens in a northeast direction?

A. Yes, sir; I pointed out and went with him, and walked on the road, and I showed him where the old road was, and he showed where the track was himself.

351 Q. You showed him where the old road was between the Hammond spring and the Boise house?

A. Yes, sir; and he was satisfied that his map was correct and that he had run the lines correct.

By Mr. HILL:

Q. Do you recollect Mr. Stokes, the London attorney that run away with another man's wife from London?

A. Yes, sir. I can't say that I knew him. Of course, I knew his name well; and, moreover, my mother, I will say to you, used to wash for Mrs. Stokes. She was a very particular lady and a lady who was dressed very fine and wanted her clothes well done up, and my mother was the one that would do it, and she employed her.

Q. Now, do you recollect whether Mr. Stokes had a house there on the eastern part of the Lindell property?

A. Yes, sir.

Q. How large a house was that?

A. A good-sized brick house.

Q. Where was that house, if you pointed it out to Cozzens?

A. We didn't talk about that part.

Q. I wish you to tell the court where that house was of Stokes.

A. That house was directly north of what is now called the Wedge house.

By Mr. JEWETT:

Q. Then it was this side of Grand avenue?

A. Of course, a long ways.

Q. The Wedge house is about three-quarters of a mile from the court-house? The Wedge house is about 27th or 28th street?

A. Yes, sir; about three-quarters of a mile from the court-house.

Q. Then about what street as now laid out would the Stokes house be on—on Garrison avenue or east of Garrison avenue? About directly on Ewing avenue, wouldn't it?

A. No; about Garrison avenue somewhere.

By Mr. HILL:

Q. It must be because it was in the Camp tract. You know where Walsh's property is, that died—the large brick house?

A. Yes; it was west of that.

352 Mr. HILL: That house is west of Leffingwell avenue.

By Mr. JEWETT:

Q. How far west of that large house that Walsh owned when he died was the Stokes house?

A. About a square or two west.

Q. That would bring it a half a square west of Garrison avenue, probably?

A. Yes, sir.

Q. Was the Stokes house on Stoddard's Addition or off of it?

A. On Stoddard's Addition.

Q. Then it was not on the Lindell Addition?

A. No, sir. First Mr. Collier had it; then Mr. Benoist had it; then Mr. Darby and Mr. McAllister. I believe I knew all the owners.

Q. It was on what is known as Stoddard's Addition?

A. Yes, sir.

By Mr. HILL: Do you know anything about whether Stokes claimed the land west of the house what is now called Garrison avenue?

A. I believe he did, because he put a part of the fence along there.

Q. Now I am getting at the fencing of Stokes. How far did that run west of Garrison avenue?

A. Why, it must have run not less than a mile. It was not very much of a fence. It was not when I saw it. There was posts along.

Q. Now, how far did that fence run after it went a mile out—how far south or north?

A. That is all there was. The fence was only begun. It was never finished.

Q. That Stokes built?

A. Yes. It was never finished.

Q. And his fence run out a mile?

A. Yes, sir.

Q. On what line did that fence run?

A. Parallel with the old road.

Q. Was it further north than the old road or on a line with the old road?

A. It was on the south side of the road.

Q. How far south of the old road?

A. Not far; pretty close to it.

353 Testimony of *testimony of* Sullivan Blood, in words and figures following:

SULLIVAN BLOOD, being duly sworn, testified as follows:

Direct examination by Mr. HILL:

Q. How long have you been a resident in St. Louis?
A. I came here in 1817.
Q. What was your age when you came here?
A. I was nearly twenty-two.
Q. Are you familiar with this section of country, this fence they have been talking about, this side of King's highway, and that old road and the Hammond spring?
A. Yes, sir; I know the Hammond-spring tract very well.
Q. Did you know it in 1823?
A. Yes, sir.
Q. Had you at that time any official position that required you to look at property?
A. I was constable of the township of St. Louis, city and township of St. Louis, which extended all over the county—the jurisdiction did. Then, at the same time, I was deputy sheriff for Mr. Walker.
Q. The sheriff who sold this property in 1823?
A. Yes, sir.

By Mr. JEWETT:

Q. Were you deputy at that time, in 1823?
A. I believe so—that is to say, I was deputy in this way: I did not attend to the business strictly altogether; I was constable of the township, and if the sheriff had any business to do I done it for him as deputy.

Mr. HILL (showing map to witness): This is the location of Joseph Hunot here, running down to that point colored in blue. It commences here and runs around here. Here is the King's highway here; there is Cabanne's there; here is the south line; this is that property conveyed to Stokes, which we have given in evidence, by deed of 1819 conveyed to Stokes, a tract of — contain- 234 acres of land. Here is the balance of that tract, containing 240 acres,
354 more or less. You have heard the testimony in this case that has been given this afternoon in regard to the location of these tracts of land. Here is the Marie spring—the Hammond spring; here the forks of the roads; that is the one to Cabanne; this forks here, and that to the King's highway; here is the survey for Conway. Now, I will show you another map (exhibiting another map to the witness). These are simply projected lots of the Bisette or Provenchere cultivation; this is the Marie cultivation of Boise. I call your attention to the testimony of witnesses that represent this land as lying east and west instead of running six acres north, which would bring this Bisette tract so that it would just about come on the south line of this lot—about that far on the south line of this

Stokes property (indicating). I call your attention that the furrows of this cultivation run east and west, and that Boise included this spring, and the Provenchere was south of it two arpens, and that Provenchere sold to Philipson. Here is a deed to Philipson of the Provenchere tract of land. (A translation of the deed was then read by Mr. Hill.) The date of this deed is the 25th of July, 1816, signed "Mary Provenchere," the widow of John Provenchere. Now, this is the conveyance by them to Philipson and Labadie. Labadie conveys to Philipson in 1818 by precisely the same description. These deeds I give in evidence, and I will hand them to the court.

Q. Now, Mr. Blood, with all these facts before you and with your knowledge of this tract of land and these deeds, for I understand you to say you have been out on the land yourself?

A. A few weeks ago; yes, sir.

Q. And were there in the early days when Hammond was there; in 1820 or 1823?

A. I was there in 1819. I recollect on that same tract of land they had a celebration there on the fourth of July, at that very spring, I think, in 1819; I don't know but 1818.

355 Q. Was Hammond then living there, or was there any house there?

A. There was a house there; there has always been a house there, or a cabin.

Q. There was a cabin at that time you had the barbecue or celebration?

A. Yes, sir.

By Mr. MORRISSON:

Q. How far was the house from the spring?

A. It set back on the hill, the cabin, three hundred feet, I should say; three hundred, more or less.

Mr. HILL: Now, I will read the description in the advertisement: "Containing two and a half arpens front by forty deep; also lot 240 arpens west of St. Louis, bounded south by land of Gratiot and Philipson, west by land of Cabanne, and east by land of Stokes and others." That is the description in the advertisement; now I will read the description in the deed: "A tract of land containing 240 arpents, more or less, bounded on the south by land of Gratiot and Philipson, on the west by land of John P. Cabanne, and on the east by land of William Stokes and others, and includes the big spring known by the name of Hammond spring."

Q. Can you locate it on this map by this description?

A. Well, sir, the Hammond spring, I should think that it contained just the same ground as the Hammond spring; that is all I know about it. The Hammond spring belonged to old Samuel Hammond at this time, supposed to belong to him. It was levied on by the sheriff and sold as such, and I suppose that is the description of this land.

Q. Would the community in that day have understood where this land was situated by this description?

356 A. I don't think there is much doubt of it.

Q. Which is the land claimed under the sheriff's deed?

A. Yes; what was known as the Hammond land there and the Hammond spring.

Q. And the Hammond spring is outside of this tract, but this land was known as the Hammond land, you say, at that time?

A. Yes, sir.

Q. And under this advertisement would the people at that time have known what land was being sold, in your opinion, in this community?

A. I should suppose they would—I should think so.

Q. You knew it. Did you ever see this advertisement before, when it was being sold, or don't you remember?

A. I don't recollect it. I knew Mr. Hammond very well, but never knew that he lived on that ground.

Q. Hammond lived in town?

A. Yes, sir; he went away from here in 1824 or 1825.

Q. Did you know he claimed this land?

A. Yes, sir; I knew it was claimed by him, and as such levied on and sold.

Q. Was the Cabbanne tract on the west perfectly known to everybody at that time?

A. I suppose it was. Cabbanne did not go there until 1819.

Q. The sale was in 1823?

A. Yes, sir.

Q. And the eastern boundary by Stokes and others?

The WITNESS: I knew Philipson very well, but I never knew he owned land there.

Mr. MORRISON: You knew he owned here (indicating), didn't you?

A. I don't know that he did.

By Mr. HILL: How long have you known Peter Lindell to have been in possession of this property here—of all this property from the Camp tract all the way around?

A. He claimed to own from Garrison avenue to the King's
357 highway, north by Olive street and south by what is known as Laclede avenue, straight up. I don't know how many acres.

By the COURT:

Q. Olive street would run to that point, wouldn't it?

A. Yes, sir. I have heard the description of that road and that accords with my recollection. It runs around this lake, and here is the road on the north side of the lake (indicating).

Q. And also a road on the south side?

A. I don't recollect it.

Q. Would you have known this description to have meant this land in 1823?

A. Yes. I think I should have known it if I had read the advertisement.

Q. And you think the community would?

A. Yes, sir; I think so. That is about the descriptions that the

sheriffs gave in those them days; that is about as near as they could come to it.

By Mr. JEWETT: Pretty vague?

A. Yes, sir.

Cross-examination by Mr. JEWETT, counsel for the plaintiffs:

Q. Where that land is described in the sheriff's deed as bounded south by Philipson and Gratiot, can you say Philipson and Gratiot had any boundary on the south side of this land if the sheriff undertook to convey this piece of land as they claim? He says it is bounded south by Gratiot and Philipson. How can you verify that boundary?

A. I don't know that Gratiot owned any south of it. I don't know who owned it.

Q. If Gratiot or Philipson owned any portion of this land the description would not be inserted, would it, in the deed? If the sheriff's deed bounded this land south by Gratiot and Philipson, and that is the south line of it, how is that description verified? That is south by Philipson, isn't it?

358 A. Where is Philipson? If Philipson owned any of that land it was south.

Mr. MORRISON: Let me read the description: "Two hundred and forty arpens, more or less, bounded on the south by Gratiot and Philipson." Put your finger on that and tell me where the boundary was.

A. I can't tell you where it was.

Q. And the only reason why you think you know the land is that you knew that Hammond owned it?

A. Yes, sir.

Q. And that is all?

A. I knew he owned that tract.

Q. You knew it was levied on and sold, but you do not pretend to say that this description covers the land?

A. I do not know whether it covers it or not; all I say is I believe at that time people would have known what the land was that was up for sale.

Q. If it had been bounded wrong, if they knew anything about the boundaries, wouldn't the sheriff's description have been false in every particular?

A. That is a legal question. If Stokes owned that land, it would not be a correct boundary.

Q. If it said "bounded east by Stokes and others," and Stokes owned no portion of this strip here, that would have been false, wouldn't it, except as to others?

A. I suppose it would not have been correct boundary.

Q. If it said it included the Hammond spring, and the Hammond spring is on the Conway tract, that would have been false, wouldn't it?

A. I suppose it would.

Q. Now, if Stokes owned that tract up to there (indicating), but somebody else owned back, and if it was bounded east by Stokes and

others, the description would answer to this piece of land, wouldn't it?

A. I suppose so.

Q. And if Gratiot owned up to there (indicating), and Philipson owned there, and this land is bounded by the sheriff
359 south by Gratiot and Philipson, then the boundary would answer for the south boundary of this piece of land, wouldn't it—the Stokes land?

A. I suppose so.

Q. Then according to that all the boundaries and all the calls, except that it is bounded west by Cabbanne, are false?

A. Yes, sir.

Q. Now, the boundaries, all except the western one, are false, unless Gratiot and Philipson owned that and Stokes owned this?

A. Well, that is not a very good description by the sheriff. It was the best he could give. I suppose everybody would know that it was Hammond's land that they were trying to sell.

Q. If you had been buying there you would have supposed that you were buying the Hammond spring tract?

A. Of course I would.

Mr. HILL: And the balance of it.

Mr. JEWETT: You were not if you were buying only this piece?

The WITNESS: I suppose not.

Mr. JEWETT:

Q. You would have been deceived if you thought you were buying the Hammond spring; can you locate this land according to the boundaries of the sheriff?

The WITNESS: I should have known that he was trying to sell Hammond's land, and I supposed he always owned the spring.

Mr. JEWETT: And you suppose that would have covered the Hammond spring?

A. Lindell owned it afterwards; you would have paid more for it on that account if it had included the Hammond spring.

By Mr. JEWETT:

Q. Was this piece of property, the 240 acres, at that time fairly and justly worth according to the market price in 1823—in the fall, what was this 240 acres of land fairly worth?

360 A. I wouldn't be able to tell you; the land was very low about that time.

Q. There was no particular depression then, was there?

A. Yes; everything was broken up down to the lowest pitch.

Q. Stay law in force?

A. Stay law—State loan office to get rid of the debt.

Q. They gave you, nevertheless, paper money?

A. Land was very miserable at that time.

Q. Can you say what a fair price of that it would be?

A. I don't know; I wouldn't pretend to say now what it was worth then.

Q. Was it worth $5 an acre or $10?
A. Yes; I suppose twenty.
Q. Wasn't it worth fifty?
A. I don't believe it was.
Q. Wouldn't it have brought $40 an acre?
A. No, sir; I don't think it would have brought $10 an acre—not more than that.
Q. Now, how much difference was there in prices between land in 1818 and 1824?
A. I think probably it would sell better in 1819 than 1823. Everything went down to nothing—there was no sale for anything, property, hardly—from 1821 to 1823.

By Mr. HILL:

Q. How long has Mr. Lindell been in possession of this land? Do you know?
A. Mr. Lindell claimed the possession from Stoddard's Addition, from Garrison avenue to King's highway, taking that whole tract there up to the Olive-street road and south by Laclede avenue as far as it went. I don't know where the land went beyond that.

By Mr. JEWETT:

Q. Do you know anything about what sort of possession he had?
A. Six hundred or a thousand acres.
Q. What kind of a possession did he have?
—. He claimed it as his land.
Q. Was there any fence on any portion of this large tract which you say he claimed? How much of it was fenced?
A. I don't think there was any fenced. There might have been little patches of fence.

Mr. HILL: You mean in 1826 or 1827?
361 The WITNESS: In 1822 or 1823.

By Mr. JEWETT:

Q. Was any of it fenced before Mr. Fenn went on there in 1845?
A. I don't recollect of any being there.
Q. Do you remember any fence on this portion of the lot? How early do you remember any fence on any portion of this tract of land?
—. ——.
Q. I wish to know, if you know, whether there was any fence on this portion of the tract fenced by Lindell; if you know anything about how early it was fenced by him.
A. It was fenced in west of the spring, but I don't recollect what time.
Q. How early?
A. I should think in 1830.
Q. Wasn't it as late as 1845?
A. I couldn't say but it was.
Q. Do you remember when Fenn had his big cow pasture there?
A. I know somebody did.

Q. Have you any recollection of any fence here before the big cow pasture, extending west?

A. No; I don't remember it. I don't know of a fence there till 1840. There might have been a little fence at the spring, where there was an orchard; probably it was fenced in.

Q. You can't say whether in 1830 or 1840?

A. No; I cannot.

Q. Do you recollect whether it was before Fenn went there and had a cow pasture there?

A. I rather think the fence was before that, but I am not certain.

By the COURT:

Q. West of the spring?

A. Yes, sir; where that orchard was.

By Mr. JEWETT:

Q. How far is that, from the house to that; from there to there (indicating)? Did the orchard cover more than four arpens south of the house?

A. I don't know; I don't recollect much about that. I must say, gentlemen, that I knew but very little about it. I took but very little notice of it at any time, except the Hammond spring.

362 I now propose under the same stipulation to read certain papers showing that Lindell claimed to be the representative of Joseph Hunot, and was so recognized by the Department at Washington; first, a certified letter written by Peter Lindell, dated at St. Louis March 12th, 1883. (See page 253 of this transcript.)

I next read a letter of John Loughborough, June, 1858, addressed to the Commissioner of the General Land Office.

(For this letter see page 254 of this transcript.)

Pl'ff- objected as incompetent & irrelevant. Court overruled the same, & pl'ffs duly excepted.

I next read letter dated August 25th, 1858, from Joseph Wilson to John Loughborough.

(For this letter see page 255 of this transcript.)

Pl'ff- objected as incompetent & irrelevant. Court overruled the same, & pl'ffs duly excepted.

I next read certificate of Adolph Renard, dated the 18th of February, 1859.

(For this certificate see page 250 of this transcript.)

I next read portion of a letter of the Department of the Interior, dated November 12th, 1860, Jacob Thompson, Secretary of the Interior, to Joseph Wilson, Commissioner of the General Land Office.

(For this letter see page- 257 to 259 of this transcript.)

I desire, in connection with the testimony that I shall offer of Mr. Cozen's oral testimony, to present what is called the history of the

Cozens' survey. Mr. Cozens, when ordered to make this sur-
363 vey, made up a full history of the survey, marked E, Aug. 19, 1852, and send it to the Department.

(For the history of the Cozens survey see page- 216 to 236 of this transcript.)

There is also a paper I forgot in connection with the McCollough patent to put in, and that is the letter of Smith, Commissioner of the General Land Office, dated January 23rd, 1860.

(For this letter see page 257 of this transcript.)

Pl'ff- objected as incompetent & irrelevant, being between other parties. Court overruled objections, and pl'ff- duly excepted.

I now desire to offer a copy of a deed of the board of president and directors of the St. Louis public schools to Peter Lindell, dated August, 1845.

Pl'ff- objected because there is no survey of this land for the schools. Court excluding the same, and defendants duly excepted.

I now refer your honor to an act of the Legislature of Missouri transferring to the public schools of the city of St. Louis all right, title, and interest which they may have acquired under the act of Congress of 1864, which I have read.

(Need not insert; may be read in evidence from the book.)

I next desire to read the letter of Elijah Haywood, Commissioner of the General Land Office, dated February, 1834, to William H. Ashley, of this city.

(For this letter see page 240 of this transcript.)

364 Pl'ff- objected as being incompetent & irrelevant & as being between private parties. Court overruled the same, and pl'ffs duly excepted.

I now desire to read a letter of Joseph Phillipson to the Commissioner of the General Land Office which bears upon the description contained in our deed, dated St. Louis, July 15th, 1841.

(For this letter see page 240 of this transcript.)

Pl'ff- objected as being incompetent & irrelevant and as being between private parties. Court overruled the same, & pl'ff- duly excepted.

I next read a communication of the surveyor general at the city of St. Louis, dated August 19th, 1852, to the Commissioner of the General Land Office, at Washington.

(For this communication see page- 140 to 174 of this transcript.)

Pl'ff- objected as being incompetent & irrelevant. Court overruled the same, and pl'ff- duly excepted.

I next desire to read a letter addressed to the Commissioner of the General Land Office by the surveyor general, John Loughborough, dated St. Louis, October 14th, 1857.

(For this letter see page 244 of this transcript.)

Pl'ff- objected as being incompetent & irrelevant. Court overruled the same, & pl'ffs duly excepted.

I next offer a batch of notices given by Cozens in his surveys, which were published in the papers.

For these notices see page 216 of this transcript.

364½ Pl'ffs objected as being incompetent & irrelevant and as being the act of a private person and hearsay testimony. Court overruled objection, and pl'ff- duly excepted.

I now refer your honor to the laws of the United States, and introduce certain acts in relation to insolvent debtors of the United States under which Hammond took the benefit of the insolvent act. (Need not insert, and laws may be read from statutes.)

As I plead the statute of limitations, I next desire to introduce a certified copy of the proclamation of the Secretary of State of the United State- in regard to the 13th amendment of the Constitution issued in the year 1865.

Proclamation in Regard to 13 *Const. Amendment.*

William H. Seward, Secretary of State of the United States, to all to whom these presents may come, Greeting:

Know ye that whereas the Congress of the United States, on the 1st of February last, passed a resolution which is in the words following, namely:

"A resolution submitting to the Legislatures of the several States a proposition to amend the Constitution of the United States.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of both houses concurring), That the following article be proposed to the Legislatures of the several States as an amendment to the Constitution of the United States, which, when ratified by three-fourths of said Legislatures, shall be valid, to all intents and purposes, as a part of the said Constitution, namely:

365 "Article XIII.

"SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.

"SECTION 2. Congress shall have power to inforce this article by appropriate legislation;"

And whereas it appears from official documents on file in this Department that the amendment to the Constitution of the United States proposed as aforesaid has been ratified by the Legislatures of the States of Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hamp-

shire, South Carolina, Alabama, North Carolina, and Georgia—in all, twenty-seven States;

And whereas the whole number of States in the United States is thirty-six; and whereas the before specially named States whose Legislatures have ratified the said proposed amendment constitute three-fourths of the whole number of States in the United States:

Now, therefore, be it known that I, William H. Seward, Secretary of State of the United States, by virtue and in pursuance of the second section of the act of Congress, approved the twentieth of April, eighteen hundred and eighteen, entitled "An act to provide for the publication of the laws of the United States and for other purposes, do hereby certify that the amendment aforesaid has become valid, to all intents and purposes, as a part of the Constitution of the United States.

366 In testimony whereof I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the city of Washington this eighteenth day of December, in the year of our Lord one thousand eight hundred [L. S.] and sixty-five, and of the Independence of the United States of America the ninetieth.

WILLIAM H. SEWARD,
Secretary of State.

The following is a list of the names of the States whose Legislatures ratified the amendment to the Constitution, which, on its adoption, became the thirteenth article, and the dates of the said ratifications, the same having been prepared from the records on file in the Department of State:

Illinois	Feb.	1, 1865.	Wisconsin	Marcl.	1, 1865.
Rhode Island	"	2, "	Vermont	"	9, "
Michigan	"	2, "	Tennessee	April	5–7, "
Maryland	"	1–3, "	Arkansas	"	20, "
New York	"	2–3, "	Connecticut	May	5, "
W. Virginia	"	3, "	N. Hampshire	July	1, "
Maine	"	7, "	S. Carolina	Nov.	13, "
Kansas	"	6–7, "	Alabama	Dec.	2, "
Massachusetts	"	8, "	N. Carolina	Dec.	4, "
Pennsylvania	"	8, "	Georgia	"	9, "
Virginia	"	9, "	Oregon	"	11, "
Ohio	"	10, "	California	"	20, "
Missouri	"	10, "	Florida	"	27–28, "
Nevada	"	16, "	New Jersey	Jan.	23, 1866.
Indiana	"	16, "	Iowa	"	24, "
Louisiana	"	17, "	Texas	Feb.	18, 1870.
Minnesota	"	8–23, "			

367 UNITED STATES OF AMERICA:

DEPARTMENT OF STATE.

To all to whom these presents shall come, Greeting:

I certify that hereto annexed are true copies and statements from the records and files of this Department.

In testimony whereof I, William Hunter, acting Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 7th day of Novem-
[SEAL.] ber, A. D. 1881, and of the Independence of the United States of America the one hundred and sixth.

W. HUNTER,
Acting Secretary.

I offer to show that these States were peaceably in the Union at that time; and, if so, this suit has not been brought within the 10 years.

I next offer the proclamation of April 19th, 1861, known as the Blockade proclamation, volume 12, page 1259; next, April —, 1861, volume 12, page 1259; next, August 16, 1861, volume 12, page 1262; next, the act of Congress July 13th, 1861, volume 12, page 257; also act of Congress of August 6th, 1861, volume 12, page 326; also the following proclamations: May 22, 1865, removing restrictions on trade, volume 15, page 758; next, executive order of April 20th, 1865, volume 13, page 776; next, May 22, 1865, volume 13, page 758; next, June 13th, 1865, volume 12, page 763; next, June 17th, 1865, same volume, page 764; next, May 29th, 1865, volume 13, page 760; next, June 13, 1865, volume 13, page 761; next, June 17, 1865, volume 13, page- 765 and '6; next, June 21, 1865, volume 13,
page 767; next, June 23, 1865, volume 13, page 768; next,
368 June 24, 1865, volume 13, page 769; next, June 13, 1865, volume 13, page 763; next, June 24, 1865, volume 13, page 769; next, August 29, 1865, volume 13, page 772; next, October 28, 1865, volume 13, page 773, and the proclamation of thanksgiving that the war was all over and that we were at peace; also the proclamation of April 2nd, 1866, 14th volume, page 811.

(Need not be inserted; any proclamation, acts, &c., may be read from the statutes.)

I now propose to read the report of the Post Office Department, December, 1865, published by order of the Government. This is a report of the Postmaster General of the United States made to Congress at the session on December first, 1865, dated November 15th, 1865.

(Need not insert; may be read from the reports.)

There is a tabular statement connected with this showing the service in the Southern States, which I desire to make evidence, showing that the service had been opened in South Carolina, Georgia, and Alabama and all the seceding States at that time, and postmasters appointed and the reported revenues collected for the year 1865 and the expenditures made in those States.

(Need not insert; may be read from the reports.)

I next desire to offer certified orders from the War Department showing that the railroad service in the seceding States was turned over to the railroad companies that owned them previous to the war as early as October, 1865, under an order dated August 8, 1865, and October 14th, 1865, thereby restoring to the hands of the companies themselves travel and trade in the seceding States, and that people were free to go and come as they chose.

369 *General Orders, No. 56.*

QUARTERMASTER GENERAL'S OFFICE,
WASHINGTON, D. C., *28th Sept.*, 1865.

The following order, by the President of the United States, in relation to the relinquishment of the Government's control over all railroads in the State of Tennessee and their continuations in adjoining States now occupied by the United States military authorities and no longer needed for military purposes, is published for the information of all officers and agents of the quartermaster's department.

M. C. MEIGS,
Brevet Major General U. S. A., Quartermaster General.

Order from War Department, U. S. A., Aug. 8, 1865.

WAR DEPARTMENT,
WASHINGTON, *August 8th*, 1865.

Major General George H. Thomas, commanding military division of Tennessee, Nashville, Tennessee.

GENERAL: It having been determined by the Government to relinquish control over all railroads in the State of Tennessee and their continuations in adjoining States that have been in charge of, and are now occupied by, the United States military authorities, and no longer needed for military purposes, you are hereby authorized and directed to turn over the same to the respective owners thereof at as early a date as practicable, causing, in all cases of transfer as aforesaid, the following regulations to be observed and carried out:

1. Each and every company will be required to reorganize and elect a board of directors, whose loyalty shall be established to your satisfaction.

370 2. You will cause to be made out in triplicate, by such person or persons as you may indicate, a complete inventory of the rolling stock, tools, and other materials and property on each road.

3. Separate inventories will be, in the same manner, made of the rolling stock and other property originally belonging to each of said roads and that furnished by and belonging to the Government.

4. Each company will be required to give bonds satisfactory to the Government that they will, in twelve months from the date of transfer as aforesaid, or such other reasonable time as may be agreed upon, pay a fair valuation for the Government property turned over to said companies, the same being first appraised by competent and disinterested parties at a fair valuation, the United States reserving all Government dues for carrying mails and other service performed by each company until said obligations are made; and if, at the maturity of said debt, the amount of Government dues retained as aforesaid does not liquidate the same the balance is to be paid by the company in money.

5. Tabular statements will be made of all expenditures by the

Government for repairing each road, with a full statement of receipts from private freights, passage, and other sources; also a full statement of all transportation performed on Government account, giving the number of persons transported and amount of freight and the distance carried in each case, all of said reports or tabular statements to be made in triplicate, one each for the Secretary of War, the military headquarters of the department, and the railroad company.

371 6. All railroads in Tennessee will be required to pay all arrearages of interest due on the bonds issued by that State prior to the date of its pretended secession from the Union to aid in the construction of said roads before any dividends are declared or paid to the stockholders thereof.

7. Buildings erected for Government purposes on the line of railroads and not valuable or useful for the business of said companies should not form a legitimate charge against such companies, nor should they be charged for rebuilding houses, bridges, or other structures which were destroyed by the Federal army.

8. You are authorized to give any orders to quartermasters within your division which you may deem necessary to carry into execution this order.

By order of the President:

EDWIN M. STANTON,
Secretary of War.

372 *General Orders, No.* 62.

QUARTERMASTER GENERAL'S OFFICE,
WASHINGTON, D. C., *Oct.* 23*d*, 1865.

The following order, by the President of the United States, in relation to executive order of 8th August, 1865, extending the provisions and benefits of the same to all railroads within the limits of the military division of the Tennessee desiring to purchase railroad rolling stock and material from the United States for the purpose of repairing the losses of war, is published for the information of all officers and agents of the quartermaster's department.

M. C. MEIGS,
Brevet Major General U. S. A., Quartermaster General.

Order from War Department, U. S. A., Oct. 14*th*, 1865.

WAR DEPARTMENT,
WASHINGTON, D. C., 14*th October*, 1865.

Major General George H. Thomas, commanding military division of the Tennessee, headquarters, Nashville, Tennessee.

GENERAL: The provisions and benefits of the executive order of 8th of August are hereby extended to all railroads within the limits of your command desiring to purchase railroad rolling stock and material from the United States for the purpose of repairing the losses of war.

You are also authorized to direct the sale of any such railroads of rolling stock now within the limits of your command and not needed by the United States for actual use upon the following conditions, if they are preferred to the terms of the order of 8th August and the individual security required by you under that order:

373 You will take care that this property is distributed among the several roads in proportion to their actual needs, and that none is sold to any railroad in excess of the reasonable requirements of its business or to be used for purpose of speculation, sale, or hire to other roads.

You will require from all such railroad companies satisfactory bonds, in the form herewith enclosed, binding them to the payment to the United States of the full appraised value of the property sold to them, in equal monthly instalments, with interest at the rate of seven and three-tenths per cent. per annum, within two years, credit being allowed to them, on the first of each month, at the established rates now allowed to Northern railroads for such service.

Full reports of all sales under this order will be made to the War Department from time to time, as required by existing orders.

The serviceable railroad iron in possession of the quartermaster's department at Chattanooga and Nashville is excepted. It will be sold only for cash at the prices fixed by the War Department.

By order of the President:

EDWIN M. STANTON,
Secretary of War.

Bond.

Know all men by these presents that the —— railroad company, duly incorporated by the act of the —— of the State of ——,

374 by —— ——, its president, acting for and in behalf of said railroad company, do hereby acknowledge itself and its successors held and firmly bound unto the United States of America in the full and just sum of —— dollars, lawful money of the United States; for which payment, well and truly to be made to the disbursing quartermaster of the United States military railroads, at his office, in Nashville, or to such other disbursing quartermaster as may be designated by the War Department, within two years from the date of these presents, the said railroad company, by its president, hereby binds itself and its successors firmly by these presents.

Sealed with its corporate seal, attested by the signature of its president, and affixed by the express authority of its directors this — day of ——, in the year of our Lord one thousand eight hundred and sixty—— (186—.)

The nature of the above obligation is such that whereas the above-bounden railroad company has purchased and received or shall receive, from the War Department of the United States rolling stock, iron rails, cross-ties, chairs, spikes, timber, and other materials for repairing and operating its railroad, in quantities, at prices, and to an amount and value which shall be evidenced by the receipts

given for the same by the said railroad company to the proper officer of the said War Department, upon a credit of two years from the date of these presents, payable in equal monthly instalments, with interest at the rate of $7\frac{3}{10}$ per cent. per annum, within the said two years, either in cash to the disbursing quartermaster of the United States military railroads at his office, in Nashville, or to such other disbursing quartermaster as may be designated for this purpose by the War Department, or in transportation of the troops or military supplies of the United States under the orders of the proper military authorities at the rates of fare and tolls allowed for such service to Northern railroads; and

Whereas the said railroad company desires and by these presents intends to secure to the United States the complete and punctual payment as aforesaid of the amounts which may be due for the said materials received or to be received by it from the United States:

Now, therefore, if the said railroad company shall well and truly pay as aforesaid, either in cash, in equal monthly instalments, or in transportation as aforesaid, to the United States within two years from the date of these presents all that shall be due as aforesaid to the United States on account and in payment for all the materials received as aforesaid from the United States, then this obligation shall be void and of no effect.

But if the said railroad company shall fail to pay to the United States all or any portion of what may be due to the United States on account of the said materials received from the United States within two years from the date of these presents, either in cash as aforesaid or in transportation as aforesaid, or shall fail to pay any of the monthly instalments aforesaid punctually when due, then this obligation shall remain in full force and effect to the extent that may be necessary to fully repay to the United States for the full amount which may be due on account of the said materials so received as aforesaid and all loss or damage which may have been incurred by the United States by reason of the said railroad company's failure to pay for the same what shall be due therefor when the same shall be due; and,

As a further security for such payment and indemnity to the United States, the United States shall have a lien upon the property sold to said company, and, in default of such complete and punctual payment of all moneys which may be due on account of the aforesaid purchase of materials, be fully authorized to take possession of and sell said property, and also to place in charge and control of the said company's railroad an agent of the said United States, who shall be fully empowered, and by these presents is fully empowered, in case of such default as aforesaid, to collect all the revenues of the said company, and apply the same to the payment to the United States of all the moneys which shall be due at the times of such application of such revenues to the United States for any such materials which shall have been delivered by the United States to the said railroad company or by reason of any loss or injury to the United States resulting from such default in payment of the

same; and the said company shall have no authority to sell or convey out of its possession, without the consent of the United States first in writing obtained, any of the property referred to in this agreement, but shall hold and retain the same to the exclusive use of said company in carrying on the business of transportation of persons and property over its line of road until the whole is fully paid for as aforesaid.

In witness whereof the corporate seal of said railroad company is affixed hereto by authority of its directors and attested by its president.

——— ———.

Witness:

——— ———.

377 UNITED STATES OF AMERICA:

WAR DEPARTMENT,
WASHINGTON CITY, *October* 19, 1882.

Pursuant to section 882 of the Revised Statutes, I hereby certify that the annexed printed copies of general orders Nos. 56 and 62, Q. M. G. O., 1865, and the communications of the War Department therein published, addressed to Major General George H. Thomas, commanding military division of the Tennessee, dated respectively August 8th and October 14th, 1865, are correct copies from records on file in this department.

[SEAL.] In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed on the day and year first above written.

ROBERT T. LINCOLN,
Secretary of War.

I now desire to offer certain depositions showing that the deponents were engaged in business in the seceded States during the summer and autumn of 1865, and that there was no interferences by the civil authorities nor the military authorities with trade and travel, and that people in Georgia, South Carolina, Tennessee, and other States where these plaintiffs lived were perfectly free to come to New York, Baltimore, St. Louis, or anywhere else and institute these suits.

The COURT: You can read the names of the witnesses and I can refer to them.

Names of witnesses are as follows: William H. Inman, E. L. Avery, W. C. McClure, James H. Hamilton, John D. Steel, T. H. Bristol, David McPherson, and William S. Hastings.

378 Mr. JEWETT: These depositions were taken by interrogatories, and I did not put any cross-interrogatories, deeming it utterly irrelevant; but I suppose, under the arrangement, these depositions may be put in the same as the other proof, subject to our objection.

(Plaintiffs objected as incompetent and irrelevant, and the court

sustained said objection and excluded the same, and def't duly excepted.)

The COURT: That is the order as to all this testimony.

Mr. HENDERSON: I now propose to give the names of parties who testified on the subject of champerty, viz., a champertous contract between pl'ff Marrion and the other pl'ffs for the prosecution of this action. I will read the names of the witnesses and submit the depositions to the court.

The names were read, as follows:

David L. Hammond, Augusta Barsh, William F. Barsh, Thomas M. Price, Catherine V. Price, his wife, all of Charleston, South Carolina; Alexander Webb, Laura V. Webb, and Susan Briquet, all of Aiken, South Carolina; Joseph S. Mackie, at Edgefield, South Carolina; Mary A. Washington, Hugh Washington, Ellen Washington Bellemy, of Macon, Georgia.

(Plaintiffs objected to all of said depositions as incompetent and irrelevant, and the court excluded the same, and defendant duly excepted.)

Mr. HENDERSON: Mr. Casselberry insists that I have not put in the original concession of Pierre Lacroix and the survey of Pierre Lacroix and the confirmation of Pierre Lacroix; survey — 1815. I thought I had put it in, but your honor will please note it if I have not.

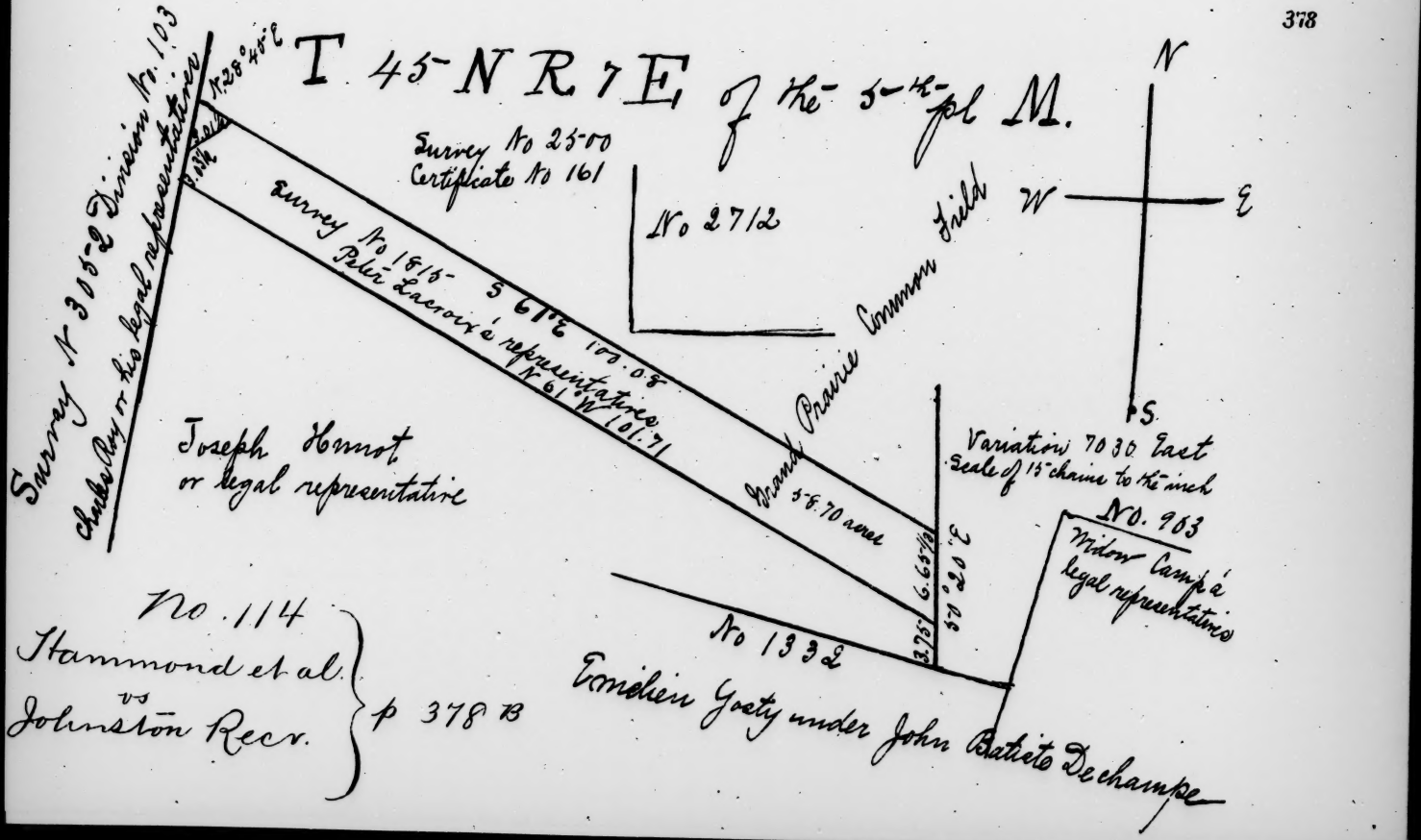
378*b* Survey No. 1815.

Plat and description of a tract of land of 58.70 acres situate in the Grand Prairie common field of St. Louis, in township 45 north of the base line, range 7 east of the 5th principal meridian, in the State of Missouri; executed in 1850 and 1855 by William H. Cozens, deputy surveyor, under instructions from the surveyor general for Illinois and Missouri, dated the 9th of May, 1846, and 22nd February, 1855, this being the tract of two by forty arpens granted to Pierre Lacroix on the 1st of October, 1766, by St. Ange & Labusiere, French officers of government in the province of Upper Louisiana, and confirmed to Peter Lacroix's representatives by the act of Congress of the 29th of April, 1816, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the Territory of Missouri." See Livre Terrien, Book No. 1, page 9, in the office of the recorder of land titles; see also American State Papers, vol. 3, page 279, Duff Green's edition, 1834.

(Here follows diagram marked p. 378*b*.)

378*c* *Description.*

Beginning at a stone thirteen inches long, seven inches wide, three inches thick, the northwest corner of this survey, thence south sixty-one degrees east one hundred chains and eight links to a stone fourteen inches long, eleven inches wide, three and a half inches thick, set in the west boundary of survey numbered nine hundred


T 45 N R 7 E of the 5th pl M.
Survey No 2500
Certificate No 161
No 2712
Survey No 1515
Pelix Lacroix & representative
N 61 W 101.71
S 67 E 107.05
Survey No 3052 Division No 103
Chas Roy or his legal representatives
N 28° 45' E
Joseph Hamot
or legal representative
Grand Prairie Common Field
5.6.70 acres
3.75
6.65
S 29° E
No 1392
Emilien Goety under John Baptiste Dechampe
No. 903
Widow Campé
legal representatives
Variation 7° 30' East
Scale of 15 chains to the inch
N
S
W
E
No. 114
Hammond et al
vs
Johnston Recr.
p 378 B

and three, in the name of Widow Camp's legal representatives, the northeast corner of this survey; thence south twenty minutes east with the west boundary of the Widow Camp's survey, at four chains and thirty-six and one-third links a stone twelve inches long, ten inches wide, three and a half inches thick, and at six chains and sixty-five and one-third links a stone, the southeast corner of this survey, from which the southwest corner of the Widow Camp's survey, in the north boundary of survey numbered one thousand three hundred and thirty-two, in the name of Emelian Yosty, under John Baptiste Dechamps, bears south twenty minutes east three chains and seventy-five links distant; thence north sixty-one degrees west one hundred and one chains and seventy-one links to a stone fourteen inches long, eight and a half inches wide, three inches thick, set in the east boundary of survey numbered three thousand and fifty-two, in the name of Charles Roy or his legal representatives, corner to this survey; thence north seven degrees east with the east boundary of the Charles Roy survey three chains and three and a half links to a stone, corner to this survey; thence north twenty-eight degrees and forty-five minutes east three chains and one and a half links to the beginning corner.

378*d* NOTE.—The whole of survey No. 1815 is covered by survey No. 2500, founded upon certificate No. 161, issued for 480 acres on the 12th of August, 1816, by Frederick Bates, United States recorder of land titles in the Territory of Missouri, in conformity with the provisions of the act of Congress of the 17th of February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes." The said certificate was located by Rufus Easton on the 16th of June, 1818. Survey by Joseph C. Brown on the 23rd of June, 1819. Patent certificate No. 404, issued on the 2d February, 1833, by the recorder of land titles in the State of Missouri.

Office of the surveyor general for Illinois and Missouri.

SAINT LOUIS, *October 27th*, 1857.

The foregoing plat and description of survey numbered one thousand eight hundred and fifteen are this day approved as recorded on pages three hundred and fourteen and three hundred and fifteen of this book.

JOHN LOUGHBOROUGH,
Surveyor General.

NOTE.—A certified copy of the plat and description of survey No. 1815 was transmitted to the recorder of land titles on the 28th June, 1862.

STATE OF MISSOURI, OFFICE OF REGISTER OF LANDS.

I, James E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of the plat and description of survey No. 1815 as the same appears of record in Book F of Record of Private Surveys now on file in this office.

In testimony whereof I have hereto set my hand and affixed the seal of my office, at the city of Jefferson, this 11th day of October, 1879.

[SEAL.] JAS. E. McHENRY,
Register of Lands.

379 *Testimony of* defendants then called as a witness WILLIAM H. COZENS, who, being duly sworn, testified as follows:

Direct examination by Mr. HENDERSON:

1 Q. State your age and where you live.

A. I am now 62 years of age; I live in St. Louis.

2 Q. How long have you lived in St. Louis?

A. I was born in St. Louis, sir.

3 Q. What is you- business occupation?

A. Land surveyor and civil engineer.

4 Q. Are you the same William H. Cozens who made surveys under instruction from the land office in May, 1846?

A. I am, sir; under the instructions of May 9th, 1846.

5 Q. State what you did. Explain to the court, if you have your plat there, what you did, what sort of survey you made, and I will also open this plat for you, showing your full work (presents a plat to the court). Explain to the court what you did under these instructions in locating the lands in the Grand Prairie common fields.

A. I will state, sir, in pursuance of the instructions I first gave residents notice, to all persons in interest, that I would survey certain claims lying in the south part of the Grand prairie, and that in pursuance of my instructions and contract with the United States Government I would undertake to make these surveys and asking parties to come forward and give me such information, written and oral, as was in their possession to make the location on the ground. A few responded. Finding but few persons to respond, I reported the fact to the department. After some delay the department further

380 authorized me to make investigations myself from the best evidence I could get and examine what we call the archives of St. Louis county—that is, the original deeds and all conveyances under the French and Spanish governments, written in both languages, and the records of the same, and all the deeds and transfer of titles to the land in question to various parties, for the purpose of getting up a connected history. I did so. I further hunted up a number of old inhabitants that I had been acquainted with from my boyhood up, whom I knew knew the country both from Illinois and Missouri, St. Louis county and St. Charles county and wherever I could get them, and I conveyed them to the premises in question and told them what I wanted of them; that they knew these people by name, reputation, and personally, and to go over the lands and to locate them to the best of their ability. These parties went on the premises and they sta-ted from what is called the great cotton-wood tree, the only tree then existing in these fields, up in the present neighborhood of the present Prairie house, so called, south of the old Rock road, and began there on the Mainville claim and

they stepped off their respective claims, where the tract was one, two, or more arpents. They stepped them off, and in stepping them off they discussed the question as to who cultivated them and who they seen there, and they went on and made a list as they did so. I kept some little distance behind them, followed them up and measured after them one or two arpents as they told me, when they were stepping off, and I marked them in that way and I got their location of the claims confirmed and unconfirmed, according to their best recollection. I then made a plat of it, and I
381 pursued the course of instructions given me by the department to go to the records. I did so, and in making my survey and my report to the office I embraced what is called Cozens' history, which was the result of that investigation, referring to the deeds, the archives and deeds, by book and page, and to the testimony, the affidavits made by these various witnesses before a notary public or justice of the peace, and I referred them to the department, together with my field-notes, the survey and description of the survey and connected plat of the surveys. That report was received and remained a long while in the department without final action. Those who had adverse locations were the principal parties, and school section 16, who opposed the claim as it interfered with them, and they kept the matter in abeyance for some time. Subsequent to that Frederick Conway, who appointed me, gave me my first commission, was out of office and he was succeeded by others—Major Merriweather Lewis Clark, Loughborough, and others—and they from time to time gave me instructions, verbal and written, to repair to the fields and to make certain changes and alterations that suggested themselves to these people or officers, which I did from time to time, not materially modifying my surveys as to the location from north to south, but simply from east to west, whether the line of survey on the east should be one continuous line or cross the Chouteau tract and cross the Widow Camp—first cross the Chouteau claims—or whether I should offset them 9 arpents and 36 French feet, corresponding to the offset that led north of where I was surveying and proceeding west—that is, they offset it from here (indicating) to there. I would start here and run this way (indicating) along that present eastern boundary, which was about
382 220 feet east of the present Grand avenue. My instructions were to make mathematically 40 arpents. In executing the survey on the premises I found those that had been surveyed previous to me, portions north of me, exceeded by 70 odd feet the 40 arpents and I reported the fact to the department. Still they said, "You adhere to your instructions; we will not modify your order, you make the offset," and I did so. I complied with them, about 70 feet short—that is, mathematically I made them 40 arpents. These lines were run on the premises on the east and west boundaries and corners established, the lines run between them and where they crossed the boundary lines, the section 16 of the New Madrid location in the name of Conway and in the name of Hunot and in the name of Genereaux and Martin Coontz—five of them, I think, and the school section 16. I retraced the lines of all of those and noted

by stone corners the intersections of my lines with the boundary lines of the New Madrid location and school section 16. I was then instructed, after returning my map, to withdraw it and to compute the amount of interferences of each claim with the several New Madrid locations, which I did. I haven't examined this map (indicating), but have one which shows the amount, how much each lot interfered with the school lands, with Martin Coontz, Hunot, Genereaux, and section 16, and where it intersectioned the boundary line of the Widow Camp. My instructions stated emphatically I was not to retrace except as connections in the surveys heretofore made by that office, except for connection purposes; nor were I to interfere with any claims heretofore made by that office—that is, lap none of my corners inside these claims; so when I got to the Widow Camp I stopped; when I reached the northern boundary line of the Emilier Yosty claim, which is the northern source of the Cul-de-Sac proper, I also stopped. When I reached the claims to the west of Roy and on the south of Charles Gratiot I also stopped. I was limited. I could not go any further. I complied with these instructions fully, and I was complimented by the department on my work as the best they had ever had done.

383 6 Q. To whom did you make your report?

A. I made my report—Merriweather Lewis Clark was in office when I made my report.

7 Q. What was done with that report?

A. It remained with him and he had an extensive correspondence with the department at Washington on the subject.

8 Q. What time did you make it?

A. 1851.

9 Q. What time did Loughborough come in?

A. He came in about 1854 or '55.

10 Q. What did he do with that report when he came in?

A. The first thing he did after investigating it was to suggest some alterations, not in the location of any claim but in the position of the east and west boundaries.

11 Q. Well, state to the court what it was.

A. He wanted them moved one way or the other.

12 Q. In that report which you made to Merriweather Lewis Clark how did you locate these claims? Did you make the western boundary there?

A. Yes, sir.

13 Q. Is that the western boundary of your original report?

A. That is my original report, sir (indicating). I reported this in 1851. I reported in 1851 and—that is, Merriweather Lewis Clark—he reported my survey in 1852.

14 Q. How did you survey the black line—that is, the western line, as you first surveyed?

A. Yes, sir.

15 Q. When Loughborough came in what did he order you to do?

A. He first ordered them to come back here (indicating) to make the western boundary from here straight through a continuous

line, and this line remained the same, of course, and these lands that offset mine to come in; simply to take that line out and let that claim come here (indicating).

16 Q. State what was then done.

A. He first gave me an order. I said that I had been a long while in drawing my money and I didn't care about going
384 to the field to do any more work unless I had assurances of compensation for what I had done, and he said, "You are a young man and I will give you my assurance that your claim on the department at Washington will be paid and I will pay you for what you have done," and I said, You give me a written instruction on the officer, and he gave me a written instruction and then I went to the field on the 19th of August on a written instruction. I was told just what to do and I did just what I was told to do.

17 Q. What did he tell you to do?

A. Well, to run down cross there (indicating). That was, I think, in 1855. In 1857 I received instructions also.

18 Q. You moved these claims to this point (indicating)?

A. Yes, sir.

19 Q. And put them back to the west side there?

A. Yes, sir.

20 Q. Then what?

A. They remained for awhile. They got up this correspondence and it was determined to put them back where I first surveyed them; told me to take the corners. I made him give me instructions again, and I went back and replaced the corners where they were originally.

21 Q. That was after Hendricks, Commissioner of the Land Office, overruled him and required these claims to be put back?

A. Yes. I objected to removing my corners, believing I was right; but he was so persistent he persisted that I should go, and he sent a man with me from his office, his clerk, to see that the corners were destroyed and new ones put in their places. Well, I didn't care about being domineered over by a foreigner, so I filled him full of whisky in a saloon and paid a man to keep him full till I got through, and I did my work. I didn't want to be bothered with him on the premises.

22 Q. In obedience with the letter of the Secretary of the Interior you put back the corners here (indicating)?

385 A. Yes, sir; and some are there yet.

23 Q. And that is the present recognized survey?

A. I believe so, sir.

24 Q. State where lot 50 is in that survey; point it out to the court.

A. I have a plat of it here. This shows the same thing on a larger scale as that western boundary. This line there, starting from the intersection of the Le Roy tract; this line here, running off there—here is the survey of the Pierre Lacroix tract, 2 by 40; this is block 50; block 50 is one particular subdivision of the Lindell estate. This is called Lake avenue, and north of Olive street it is called Lay avenue; it runs from Forest park right up this way (indicat-

ing); this is Lindell avenue and this is the northeast corner of the park.

25 Q. Now, where would it be, about where, state to the court, on this plat?

A. About where my finger lies, right there; runs off in this direction up Lake avenue; don't follow this line, as you perceive.

26 Q. State to the court what evidence you had that this was originally the Grand Prairie common-field lands of St. Louis, and why you made that location there.

A. Because my instructions were I should go through all these processes, and particularly—besides, my instructions were positive on the question of possession I found on this claim here, right here. This claim here is called the Laroche tract; that part of it I found belonged to Mr. David Desilet, who died here only four months ago, at Florissant. He married a French lady, who got her property through her husband, and he was in possession and always had possession out here; all these claims and this 19 arpents
386 and 36 French feet agree with that western boundary here. These offsets here were made, as I calculated at the time, to the Grand Mere; these lines interferred with the Grand Merre and the concessions to the State, and, in consequence of the Grand Merre, these claims were offset. There was no Grand Merre here, and they were offset to get rid of the Grand Merre. It was all slush. Deep water runs through here, and these offsets were on good ground.

27 Q. What evidence of cultivation did you find there?

A. Well, now, cultivation had been there a great many years before; and I went on the premises, and my old preceptor, Rene Paul, came to me and says, I will take you out there and show you the old cultivation, where the fields haven't been disturbed yet."

28 Q. Who is Rene Paul?

A. He was a surveyor; he came here in the year 1807 from Baltimore; he had been surveyor, and he took me on the premises and showed me these distinctions between where the fields had been made; though the country was covered with brush, hazel brush, vines, briers, and small bushes, he showed me these, and what the French would call right on the dividing line of each claim, where the people hadn't cultivated across this way, not longitudinal, but throwing up rocks and dirt out of the ground and forming ridges, and these ridges were plainly to be seen, and wherever they were the land had never been cultivated, and a young growth had grown up and some of them pretty large, mostly wild cherry trees and grape vines; they were very plain to be seen. Now, in these concessions I found them to be all in the same direction, parrellel to the surveys lying to the north of these I was surveying, and when I got, perhaps, off the Widow Camp, I found they deflected 15 to 17 degrees around this way, and I went back to the office and re-
387 ported the fact of what I had found on the ground, the evidence of cultivation, ridges where the plowshares were made across, and the ground plowed and covered with brush, and my instructions were to keep up the consecutive connections and not to

divert the connections; to keep up those on the north and to keep up the consecutive survey, and if I found any unconfirmed claims destitute of cultivation prior to the change of government and not in the list of my confirmed, I was to measure off that width and leave that place, and designate to whom that property belonged for future action of the department, and if you will look at my list you will find many written on it, "No confirmation." Here you see (indicating), "No confirmation found of record." "Legal representatives confirmed by the act of the 9th of April, 1816, 2 by 40;" that is the Lacroix. Where I found them to be confirmed I stated it, and where I found them not confirmed I did as instructed and numbered them.

29 Q. You mean these parties never came to prove their claims under the act of December, 1812?

A. Yes; some of them came in with depositions, but there were no confirmations by act of Congress or by the board.

(Mr. JEWETT:)

30 Q. He didn't understand your question; when you say they came in, when did they come in—before you or Bates?

A. Not all before Bates; before me nearly all I found there, but they came before me after I got into it and they found I was doing it; then they became interested; the parties interested became interested, and then I was overflowed.

31 Q. Why didn't these parties insist on proving up under the act of 1824?

A. I don't know.

388 32 Q. Did you find other representatives on unconfirmed claims here?

A. Yes; many came and said they represented and were interested themselves, and I told them what I was doing, and that I would take their depositions, and if they had additional depositions I would take them; many of them got additional depositions and gave them to me, and I returned them to the department.

33 Q. Why didn't you take action under the act of 1824?

A. To prove up their claims. I wish to say this in answer to your question, that many of the owners and claimants to this land were dead long ago. None of them were living, and their representatives and heirs were, generally speaking, illiterate people, not educated people, but they knew they had claims there; didn't know where; didn't know where the survey was. Nobody could tell where they were until I made the survey and got them located and told them where I thought it was located, but the department was so dilatory with them that they thought they were going to be cheated, and they took, many of them, what anybody would give them and sold out; they got tired of waiting; that is the only reason.

34 Q. Now, from all the information you could obtain on the ground, and all the evidence you obtained in your history under the instructions of May 9th, 1846, state to the court what you now believe to be the western boundary of the Prairie common fields.

A. I always believed that to be the western boundary (indicating).

I am going to say in answer to that, as far as the eastern boundary is concerned, that is the first line I traced mathematically with an instrument; I traced it all the way east. The old French speak of the Cul-de-Sac, a cul-de-sac of the Grand Prairie, but I had a theory, and it was held by others before me, that there was one continued series of surveys right across, and that Chouteau had swallowed them up; of course, he had the best claim, and along this line were found many indications of corners, very large stones that were covered with moss and were black, and some were in the ground firm and others were toppling over and others were lying flat on the surface. I didn't find them at every tract of land, according to the width I measured, but I found them here and there, and in measuring
389 along when I struck them I always struck them within three to five feet, I was so close on them as that; I don't think I differed in my measurements with 20 foot rods, not a chain, but a 20-foot rod; I don't think I differed over five feet from any of them. Then I took a spade and dug down around about where the stones were lying. I found what we call in French "mache fer"—that is, dross or cinders that come from a blacksmith's shop from the coal, more or less mixed with iron ore. That is indestructible as gravel. They generally put about a double handful in the ground two or three feet deep and I found them, and these rocks were either planted over them or were lying in the vicinity where they were, and I became assured that this was the boundary line. The great question was whether this was the boundary line or that there (indicating), and whether I should run that line down or this one.

35 Q. You surveyed these claims here yourself?

A. Yes, sir; then I measured there (indicating), and when I get beyond there I offset back and went here, and I found evidences of cultivation all the way through here in patches. There were many of what we used to call glades, ground where nothing but grass was growing, and no bushes, and that showed as much evidence of cultivation as though they had bushes on them. I don't think the ground had been changed except in localities where Samuel Philipson cultivated out here on the Becanne tract, or on the tract right north of it; that belonged to Bouis—that is, there had not been any recent cultivation since the change of government, but still the marks of cultivation were plainly to be seen, as I stated; they were like my fingers (spreading his fingers out), and running this way and some diverted off this way.

36 Q. You found evidences of corners along here?

A. Yes, sir.

37 Q. And therefore you believe this offset was properly
390 made here?

A. Yes, sir.

38 Q. But you believe this offset was properly made again?

A. Yes, sir.

39 Q. Did you find any evidence here or anything to indicate to you that these were the lines?

A. No; that is the natural prairie. It was cultivated for some time by Lindell and Cabann. Cabanne had possession of a tract

of land along here (indicating), running this way, and it embraced all these lots right across Lindell, and there was a suit pending at the time I made that survey between Cabbanne and Lindell as to the tract that was under cultivation and the corners, if they were destroyed.

40 Q. You found Lindell in possession?

A. Yes, sir.

41 Q. Do you know how Lindell came to own that ground?

A. Yes, sir.

42 Q. Then, it is your opinion, as I understand you, that this lot 50 is in the prairie common field of the Grand prairie as the concessions were originally made by the Spanish Government?

A. Yes, sir.

43 Q. And as now recognized to be the survey of the United States?

A. Yes, sir.

44 Q. You knew Mr. Lindell, did you?

A. Yes, sir; I knew him from my earliest recollection.

45 Q. How long did you know him to be in possession of that land, lot 50?

A. He was in possession of a portion of his land as far back as 1833; 1832 and 1833, my earliest recollection. He enclosed it all up about 1837; a good part of it, though not all. He put up what is called a post and rail, cedar posts, upright in the ground and morticed, and then rails, cut off then at the ends and doubled in that way, and it was one of the strongest fences we ever had, equal to a board fence, and some of these posts are there yet all around the land.

46 Q. I see, Mr. Cozens, that this description in the deed is
391 "a tract of land containing 240 arpents, more or less, bounded south by land of Gratiot and Philipson, on the west by land of John P. Cabanne, and on the east by land of William Stokes and others, and included the big spring known by the name of "Hammond spring." I suppose the question will be raised that this is an imperfect description in the deed. I wish you to explain to the court here where Gratiot and Philipson were, where they were living in 1823, when this deed was made.

Mr. JEWETT: Cozens was not here then.

47 Q. As near as you know where they owned land, if you knew anything about Philipson there subsequently, whether he claimed land there.

A. That is Gratiot and this is Gratiot (indicating). All that west is Gratiot and this is Gratiot. Gratiot owned these claims. Cabanne bought from Gratiot, and he was there (indicating). Now (indicating), there is what they called the Hammond spring. It was called by the old inhabitants and named to me as the Marie spring. It was known by the later inhabitants and when I was a young man as the Hammond spring, for the reason that the Hammond house he had was just about up there, just west of that line.

48 Q. How far west of the spring?

A. Between 200 and 300 feet.

49 Q. His house was then just up on the hill above the spring?

A. Yes; just west of the spring.

50 Q. Where was Philipson? You didn't point him out.

A. Samuel Philipson's land was about in here (indicating) somewhere. Let me see; about in here. Samuel Philipson was in here up to the timber, a patch of timber here. Then it's low and marshy ground up to the spring. Just west of the spring it's high ground. Then there's another patch of timber where they used to have camp-meetings. Here, west of the spring or northeast of the spring, was camp-meeting ground, and some of the timbers are there yet. Now, Samuel Philipson was east of the springs and south of the springs. If you will look in that book of Henry W. Williams, called his argument, embracing my history—he took my
392 history and his argument from that history—you will find a plat made by Charles de Ward in 1836, showing the exact position of the possessions of this man Philipson.

51 Q. Do you know whether Philipson had a claim on two tracts there or one?

A. He had two.

52 Q. Where was the other?

A. One was down here (indicating). This was his tract.

53 Q. Was the Emilien Yosty claim?

A. That is the Emilien Yosty. He owned that claim and Philipson occupied it.

54 Q. The Emilien Yosty claim lies immediately south of the entire Hunot claim?

A. Yes, sir.

55 Q. Bounded it on the south entirely?

A. Yes, sir.

56 Q. Gratiot owned that, did he?

A. Yes, sir.

57 Q. And Cabanne owned this?

A. Yes, sir.

58 Q. And Philipson owned across here?

A. Yes, sir.

59 Q. Do you know whether he owned down south—how far down he went?

A. If you will show me that plat in Williams' book I will show you exactly. (Plat produced.) I assisted in 1836. I had just come out of college, and all the surveyors got hold of me—Rene Paul was my preceptor, though—but I was with Mr. Ward when he made that survey here, and I saw Samuel Philipson down here (indicating).

60 Q. That is the Yosty tract there (indicating)?

A. Now, here is the Hammond house and there is the spring and here is where the cultivation is, and Vandeventor Ave. is the west boundary of the Chouteau mill tract and runs across here. His claim was just about where Vandeventor avenue now is, right east of it, and there was an old road from St. Louis going out here, running this way and going right by the Marie spring, going up right

here towards the hil-; that's the Hunot hill, and here is where the house was, about here, and the spring was right in there some-
393 where, and the old road came in here, and right here it branched off, and they passed just north of that little patch of timber and went up here and over here, and here is marshy land, and it was cultivated here, and then it passed around there, and then the other road was north of the spring, say, about 107 to 110 feet, and it went up here, and then one branch went this way towards St. Charles, and then another branch came this way.

61 Q. That is the old road?

A. Yes, sir.

62 Q. Be good enough to point out, so we may understand it, which is the Philipson lot there.

A. Yes, sir; this is it (indicating).

63 Q. That is the upper Philipson tract?

The COURT: Which one had the right to?

A. Both of them, but he complained that Lindell was interfering with both.

64 Q. Now, did Philipson set up a claim to all this tract over here?

A. His cultivation went just to the spring.

65 Q. Where was the spring there?

A. The spring was just about in here somewhere, or there.

66 Q. Now, where did Philipson's possession lie?

A. No, no; that spring is clear down on the corner somewhere—down about there.

The COURT: The witness said awhile ago the house was near the spring.

A. Yes; the house was east of the spring, and the remains of the house are there yet, the chimneys and bricks. Bricks are lying around there. I went out a few days ago and looked at it.

Mr. JEWETT: Did you take any measurements a few days ago as to the distance of the house and the spring from the Conway line?

A. Yes, sir; close by it.

Mr. HENDERSON: Now, I read this description: "A tract of land containing 240 arpents, more or less, bounded on the south by land of Gratiot and Philipson." Suppose you take the whole
394 tract of the Hunot claim, would that be a description?

A. Oh, yes; take the whole tract.

67 Q. Gratiot and Philipson would be on the south?

A. Yes, sir.

68 Q. "On the west by John P. Cabanne"?

A. Correct.

69 Q. "And on the east by land of William Stokes and others;" would that be right?

A. Yes, sir.

70 Q. That would include the whole claim?

A. Stokes was up here outside of that.

71 Q. Explain to the court where Stokes was at that time.

Mr. JEWETT:

A. On the Ann Camp tract.

WITNESS: Way out here; he was east of Grand avenue. Grand avenue runs about through here.

72 Q. Didn't he have possessions running up here to this claim?

A. Oh, yes.

Mr. JEWETT: That is the house you speak of there?

Mr. HENDERSON: But he had a claim running out here, didn't he?

A. I don't remember that now. I will show you. I know I went—the house is there yet. Mr. Whitmore lives in it. He built a very large house. He was an Englishman. I remember him well as a boy.

73 Q. Now, in your opinion would that land have been known and recognized at that date according to the description here given?

A. Yes, sir.

Cross-examination by Mr. JEWETT:

1 X Q. Mr. Cozens, now will you be good enough to point out on this map about where the Philipson lot would cross this Conway tract and run out there? The Philipson lot laid down in the Williams book; he says that is the Philipson tract laid down there, running across there.

Mr. MORRISON: Who says that?

Mr. JEWETT: Cozens says that's one Philipson tract and
395 down there is another Philipson tract.

WITNESS: Down about to there (indicating); it would run out about that way.

2 X Q. Then how far does it strike when it comes to the west line of the Conway—how far; that gives the distance, don't it, that the south line is from the corner of the Conway?

A. 1890.

3 X Q. Then it would cross the Conway land up here somewhere, wouldn't it?

A. Just that way.

4 X Q. The south line of the Philipson tract would cross the Conway about there, would it?

A. About there; it would be further up here.

5 X Q. Then the south line of the Philipson would cross the Conway—it is almost half way up?

A. Yes, sir.

6 X Q. It would cross up there (indicating)?

A. Yes, sir.

7 X Q. Then the Philipson tract would run from here in that direction across so (indicating)?

A. Yes.

8 X Q. And the west end of it would be about up to there, wouldn't it—about?

A. Yes, sir; just about up to there; that's where the line of cultivation was.

9 X Q. Now will you please show where the south line of the 240 acres on this plat cuts this tract?

The COURT: What?

Mr. JEWETT: The Hammond tract—the 240 acres—where the south line of the Hammond tract would come.

A. Right there; about across there.

10 X Q. And the south line of the Philipson tract strikes there?

A. About up there. Philipson cultivated—all his cultivations were east of all the marsh that was immediately east of the spring; the spring is in here, and all this marsh—here was a hill, and this was low marsh where the water run in this branch that come from that spring.

396 11 X Q. The north line of the Philipson is a little more than half way up the Cabanne line?

A. Yes, sir.

12 X Q. Considerably more; the northern line, the center of that tract——

A. Is pretty near the center of the—I think it would be about there.

13 X Q. Be good enough to look at that plat.

(Witness makes a calculation, and says:)

A. Just about that; here it is right here; take the figures and it's just about there. He had no cultivation on that side.

14 X Q. But he claimed, didn't he?

A. Yes; but he had no cultivation beyond this spring.

15 X Q. Did you measure the other day how far, to get the distance of the old house, the remains of it were from the Conway line?

A. Yes, sir.

16 X Q. How far did you get it from the spring?

A. It was about 220 to '30 feet.

17 X Q. Did you measure it on the south of it?

A. I put a tape-line on it.

18 X Q. The house was 220 to 230 feet from the spring?

A. Yes, sir; west of it.

Mr. HENDERSON: That was the house Hammond lived in?

A. That his niggers lived in; he never lived there.

19 X Q. It was known as the Hammond house?

A. Yes, sir; long after. Well, Lindell himself used to call it the Hammond house—"my Hammond house."

Mr. JEWETT: Did you measure the distance of the spring from the west Conway line?

A. I don't think I did.

20 X Q. Have you been over it lately? How many feet do you think it is east of the Conway line?

A. Well, the house is up on the Hunot claim.

21 X Q. No; the house is on the Conway claim, isn't it?

397 A. Yes, sir; the line passes a short distance from the house; I didn't run the line through; all cultivated now with corn; couldn't see no lines through there. This is the rock spring; there's the old mill-dam of the Widow Camp.

22 X Q. Didn't the west line of the Conway tract run to Cornelia avenue, that takes in the entire hill?

A. I have another plat here to show. (Produces another plat.) There is the Conway tract, and here is Cornelia avenue, and there is the lot 27 on which the spring is.

23 X Q. Now, that is Cornelia avenue, on top of the hill?

A. The spring is right near Maryland avenue, about 170 feet. Here is the building. The water comes right from the corner of the building, and it's about 170 feet to the south of Maryland Ave.

24 X Q. How far east of Cornelia avenue? Isn't it on the hill where that comes?

A. Yes, sir.

25 X Q. Didn't you set off 328 feet to us in the partition between us and John Baker, and find that didn't near reach the spring down here at the foot of the hill? 330 feet is high ground there, isn't it?

A. Yes, sir.

26 X Q. Then the 320 feet we got is on high ground, isn't it?

A. Yes, sir; all that is.

27 X Q. Then you go east of the land we got in the partition? You go some ways down before you strike the spring?

A. Yes, sir.

28 X Q. How many feet east of the tract we got from John Baker?

A. I didn't measure.

29 X Q. Way down the hill?

A. Yes, sir.

30 X Q. 330 feet, and then 100 or 200 more, isn't it?

A. Yes; I can give—I haven't got it with me, but I can give it to you exactly how far the spring is from Cornelia avenue.

31 X Q. You have the measurements at home, have you?

398 A. Yes, sir; if you will permit me to do it.

32 X Q. Will you bring them in the morning?

A. Yes, sir; I don't like to speak of measurements without the figures. When I surveyed that line I took that distance.

33 X Q. You surveyed that line for us?

A. There is where Maryland avenue is; it's 145 feet from the corner of the spring. Now, the spring is right in the corner of the building. The water comes through here and runs down through here, and there is another spring, and that's the best water.

34 X Q. We don't care anything about that, except this spring.

A. Now 150 feet from the spring.

35 X Q. That would leave 300 feet or more, because the old house isn't on our 330 feet?

A. I don't know where that comes.

36 X Q. The old house is not on our 330 feet?

A. No.

37 X Q. The old house isn't on our 330 feet, certainly?

A. No.

38 X Q. Then it is more than 330 feet—the old house—from Cornelia avenue?

A. I can bring it in the morning.

39 X Q. Now, will you be good enough to tell the court where you found these old corners, stones and stuff—how far down they run?

A. I found them all along; irregular distances; sometimes one, sometimes maybe three or four straight across the Camp tract, all the way down to Chouteau avenue; all along through that valley.

40 X Q. One straight line?

A. Yes, sir; right down through the Wesleyan cemetery, and right down through that way—across where the railroad is now—across Market street to Chouteau avenue.

41 X Q. Chouteau avenue was the south side of the Chouteau tract?

A. Chouteau avenue was the south side of the Chouteau mill tract.

42 X Q. These run in a straight line?

A. Yes, sir; run in a straight line. I run it straight through.

399 43 X Q. How often did you find them along down here?

A. From three to five arpents apart, and I reported the fact to the department, and they told me that line was correct here and when I got back here to offset it.

44 X Q. Now, is it 40 arpents from here to there (indicating)?

A. Mathematically; and 40, mathematically, from here to that line.

45 X Q. Now, if the old common field run down in this direction it would be 40 arpents from here to there (indicating)?

A. Yes, sir.

46 X Q. 40 arpents in that way wouldn't touch lot 50, would it, from west?

A. No. This is the centre line of Taylor avenue. That is a prolongation of this line west of my line.

47 X Q. A little west of your line?

A. You take that line (indicating). That is the center line of Taylor avenue straight through. Now, this is Taylor avenue, but Taylor avenue here angles there at Maryland avenue.

48 X Q. Straight prolongation?

A. Take my line; 30 and 40 is 70, and 40 from here would be straight through that way.

49 X Q. This touches the lower corner of this lot?

A. Yes, sir; this is a prolongation of where the old stones were, and they told me——

50 X Q. I am not talking about that, but what you found. You found the old stones along here?

A. Yes, sir.

51 X Q. On that line, a little west of this?

A. Yes, sir.

52 X Q. And there is where you started?

A. Yes, sir.

53 X Q. These old stones were along there, west of your line that you run?

A. Yes, sir.

54 X Q. And how far down in this direction?

A. Didn't find any beyond here (indicating)—that is, south of that.

55 X Q. You found them *to* there?

A. Yes, sir.

400 56 X Q. And, from here to there did they go in a straight direction?

A. Yes, sir; an exact line from that line here. That is Page avenue now, and this is the St. Charles road—that line.

57 X Q. About down there you didn't find any stones?

A. No; didn't find any over this post and rail fence.

58 X Q. That had been cultivated along down here?

A. More or less.

59 X Q. Your instructions told you not to interfere in laying out the common field with the old surveys of Chouteau and Camp?

A. Yes.

The COURT: Just mark the location of lot 50 on this plat—these $10\frac{35}{100}$ acres.

(Witness marks the lot as requested, and says:)

A. It was about that way, and then came down to Taylor avenue.

60 X Q. You have a sharper angle; then Taylor Ave. extended run through the corner of that lot, the common-field line extended would run through?

A. The west end of the common field here, 70 feet east of the center of Taylor avenue—42 feet and 8 inches; that is what it is exactly.

(Map marked Exhibit A.)

61 X Q. I would like to have you before you get through make an accurate sketch of this boundary of the common fields extended to show exactly how much of lot 50 it would take off if this line was projected—how much of that east end of lot 50 it would take off.

A. I would have to bring a scale here. Give me a straight-edged rule and I will do it.

62 X Q. I suppose you can't tell whether this is a copy of your instructions until you read them over?

(Paper shown to witness.)

A. Are they certified?

63 X Q. Yes; they are certified as a true copy.

A. Well, then, they must be.

401 64 X Q. Your instructions were not to survey any lots except the confirmed lots, were they not? Now look at that. There is one part of them, and there is another part in which it says you are to survey the confirmed lots. It says the end lines are to be continuations of the southeastern and northwestern locations of survey 1296, and so on.

A. I did so, but the office put another word in here, "Except you are obliged to vary a little so as to have exactly 40 arpents between said end lines, and also except you find no other offsets so made to the northwestward in the original surveys, in which case you report to this office and give your reasons for supposing such to be the fact." Now comes the part you want. "It will be necessary to run the end lines of the intermediate unconfirmed claims so as to keep up the connections between those that are unconfirmed and confirmed for the purpose of putting the lat-er in their relative positions;" and that's what I did.

65 X Q. You run the end lines of the unconfirmed lots?

A. Precisely.

66 X Q. Now, this instruction says, "You are not to make a formal survey of any of the unconfirmed lots," don't it? "You are hereby appointed and authorized to survey and connect with adjacent surveys the confirmed private land claims below specified or so many of them as can be located without interfering with field lots already surveyed in the names of other persons." Then he gives you a list of them?

A. I will answer that. Now, for instance, this is a confirmed claim, isn't it?

COUNSEL: It says so on that map.

WITNESS: Well, it is confirmed—Batiste Becanne. Now, I had to give up coming down here (indicating); this lot is confirmed. Here is one of the unconfirmed, and I had to measure across the width of them to keep up my continuity, and therefore in surveying this confirmed claim I had to run that line, and then to get this line I had to measure across this to get the location as stated there, and consequently in surveying the confirmed claims I also surveyed the unconfirmed claims. I couldn't help myself.

402 67 X Q. You followed your instructions?

A. I did that.

68 X Q. That is the unconfirmed claim of Barribeau?

A. I had no confirmations, and that was because those people claimed a survey, 2 by 40, for instance, and I measured 2 by 40 and kept on.

69 X Q. All the unconfirmed claims you never returned in the field-notes to the department, did you?

A. No, sir.

70 X Q. That is all these there (indicating), and these claims have never been confirmed, as far as you know, have they?

A. No, sir.

71 X Q. Here is a map known as the Nosberger map. Now, then, the Nosberger map represent the locations of the present confirmed and patented, as you might say, common-field lots across there?

A. This was a map he made before the final action, when the instructions were made.

72 X Q. I am not talking about that exception now, but about his intermediate space.

A. Oh, this location; the location—that is right; it is the same as my map.

73 X Q. Now, on this map there is no survey recognized by the United States as a confirmed lot south of that line until you get to there, is there (indicating)?

A. No, sir.

74 X Q. Between that line and that (indicating) there is no recognized United States survey and confirmed lot, is there?

A. None at all. I made the report here in red ink; you will see it. Look up here and you will find my surveys read "no confirmation," "no confirmation."

75 X Q. Then lot 50 is in this "no confirmation" space, isn't it—all except the little end you speak of, which runs across the no-confirmation lots, all of them?

A. Yes, sir.

76 X Q. So it is all in that vacant space?

A. In that space, sir, north of Lacroix and south of the Bizette.

77 X Q. It is all between the Lacroix and the Bizette?

A. Precisely.

78 X Q. This Nosberger map represents the surveys if you extend these little ones out there which represents it as the Govern-
403 ment now recognizes the survey, does it—take them as extended there?

A. Yes, sir. At the time he made that map was when the department had ordered me to survey them east, and he accompanied me on that occasion, and the people were so anxious to know about these claims that he concluded that was final, and he made a map accordingly. The surveyor general approved and moved them east, and subsequently, after this map was made, he sent them back again.

79 X Q. The surveyor general told you to extend it out further?

Mr. HENDERSON: No; not the surveyor general.

Mr. JEWETT: Well, the Secretary of the Interior; he ordered you to stretch this possession out further?

WITNES-: Yes; and I went back and reset them there.

80 X Q. If you extend these four lots out there this map represent- the present recognized surveys of the United States, does it?

A. Yes, sir.

81 X Q. And the Lacroix is extended in the same way?

A. Yes, sir.

82 X Q. This was made when the surveyor general, Loughborough, ordered the lots to be stopped at that point, but he was overruled?

A. Yes; the plat represents this lot inside of the unconfirmed. The way is to call this the "private survey" and this the "Loughborough suggestion," and then you get at it, as I understand it.

(By Mr. HENDERSON:)

83 X Q. He was surveyor general at the time he ordered the surveys to be stopped at that point?

Mr. JEWETT: And then the Secretary of the Interior ordered these four to be extended?

A. The Commissioner of the General Land Office first.

84 X Q. But the others never were extended below the Bazette claim?

A. Never were surveyed or confirmed between the Lacroix and Bazette.

404 The COURT: From here to here were never confirmed?

A. No; never confirmed or recognized by the United States as surveys.

Mr. HENDERSON: We claim if the act of 1812 passed the title that they are in private individuals now.

WITNESS: I see your point now. I will state when I surveyed through there I surveyed all of these.

85 X Q. You run your line there?

A. And put corners there.

Mr. HENDERSON: Around each claim?

A. Yes, sir.

Mr. JEWETT: On each corner?

A. That's precisely as I done it. First I distinguished in my survey between these confirmed and those unconfirmed.

86 X Q. You didn't send your field-notes of the unconfirmed claims to the department?

A. No; no need of it; but I sent my field-notes of the connections across; yes; I did send my field-notes of all these lines, for I measured them. I measured all the unconfirmed claims.

Mr. HENDERSON: You sent your field-notes?

WITNESS: Certainly I did.

Mr. JEWETT: I think you are mistaken. You have testified a number of times that you never sent your field-notes except across the ends.

WITNESS: Of the connections.

87 X Q. You always sent——

A. Well, here—here is one of them (indicating). This is an unconfirmed claim still. You then find on the survey that lot had 40 chains and six links.

88 X Q. But that could be determined by some other claim next to it?

A. No; down here again I give it, and here I give it and across the Conway claim. I surveyed every one of them.

89 X Q. These surveys are no found recorded in the Land Office, are they?

A. No; they didn't. I understand they took the record only of these—confirmed only these—approved, I mean, those that were confirmed. I speak of my report, not of the action of the department.

405 90 X Q. They were never recognized as surveys. Any between Bazette and Lacroix?

A. No.

Mr. HENDERSON: This survey and plat are from the Land Office?

Mr. JEWETT: As Cozens' original survey, but not as the present recognized survey of the United States.

Mr. HENDERSON: That is what is certified exactly.

Mr. JEWETT: I have no doubt that Cozens made such a plat as

this; but the Government never recognized it, and you can't find a Government record to-day of it; not a single one of those lots in that space.

Mr. HENDERSON: That is a certified plat.

Mr. JEWETT: No doubt about that; but you can't find on the land records of the Land Office a survey of any of these unconfirmed claims.

WITNES-: When I returned that plat I sent a description of the lot, stating whether it was confirmed or not confirmed, and the field-notes of each one, giving all the intersections, as I was in-tructed to do, and when the department examined and confirmed or approved them made a record and picked out only these confirmed and recorded them in a book. That's the office of the deputy, not me.

91 X Q. The surveys as you finally made and as they were finally approved are represented by Nosberger's map when you put down these extensions, are they not?

A. Yes, sir; about that. As I stated, Nosberger was in a hurry to publish that map. People were anxious to know where they were, and he took up the instructions to me. He was the gentleman that went with me, and I got him full of whisky until I got through. He retraced that line originally. This is my first line, and he took it for granted that it was going to stand with the department, and then he issued his plat. It was a matter of speculation; that was all. It is very correct as it existed at that day, and it was approved by Loughborough.

406 92 X Q. They were afterwards disapproved by higher authority and s-t back?

A. Yes, sir.

93 X Q. And these four little ones run out afterwards?

A. Yes, sir.

94 X Q. You say Cabanne owned all on the west side of the entire Hunot survey in 1823?

A. Yes, sir.

95 X Q. Gratiot owned that and Philipson owned this strip here?

A. Yes, sir.

96 X Q. And Yosty and Philipson did?

A. Yes, sir.

97 X Q. Yosty and Phillipson did south, bounded south by Gratiot and Phillipson, east by Stokes, which was the Ann Camp tract?

A. Yes; he lived on the east end of it.

98 X Q. There is no northern boundary put down in the deed. Now, at the time that deed was made—this Conway survey was made before that, wasn't it?

A. I think it was.

99 X Q. Before 1823?

A. I think it was.

100 X Q. The Delisle survey was made before 1823?

A. Yes, sir.

101 X Q. And the De Noyer in here?

A. Yes, sir.

102 X Q. And the Gratiot was surveyed before 1823?

A. Yes, sir.

103 X Q. And the Gratiot league square was surveyed in Spanish times?

A. Yes, sir.

104 X Q. Cabanne at that time claimed to own a strip where it had been surveyed to Chouteau—two strips—10 arpents?

A. Yes, sir.

105 X Q. Cabanne at that time claimed to own the 10-arpents tract of Gratiot and Chouteau, did he?

A. Oh, yes.

106 X Q. Now, the yellow strip on this plat represents the entire Hunot survey, does it?

A. Yes, sir.

107 X Q. 480 acres?

A. Yes, sir.

407 108 X Q. The line which you run across here dividing the Stokes from the other—the north part—contains 240 acres?

A. The Hammond part. Stokes here and Hammond there.

109 X Q. That is Baker avenue now?

A. Yes, sir; this is the Stokes tract, the strip running there. Here it is on this map—the whole thing. By the deed it is three chains and 83 links, equal to 252 feet by the deed.

110 X Q. It runs diagonally down?

A. It runs due west.

111 X Q. Due west is about in the direction of that line?

A. Yes; just parallel to that line; there's about where it runs across; there it goes.

112 X Q. 15 chains and 17 links?

A. 1,036 feet.

113 X Q. Runs about parallel to this line?

A. Yes, sir.

The COURT: This line here traced upon this *man*—can you show that?

A. There is about the right place to start the line; now bring it across this way. Give me a straight-edge and I will do it. Now bring that line down (indicating).

114 X Q. Suppose you made it to conform to the survey on the other side?

A. That's it.

115 X Q. Now, if you can lay out on that map—this Williams map—the Phillipson lot, the court can take this book and judge itself. You can see the line crossed about the middle of the Conway line; the middle of the Phillipson lot is about the middle of the Conway line.

WITNESS (after figuring) says: It comes right about there.

116 X Q. Where would the north line of that Phillipson tract be—Phillipson had two arpents or more?

408 A. Two arpents.

117 X Q. Then he had these two arpents, did he?

A. It comes about here.

118 X Q. The east end of this lot was in the common fields?

Mr. JEWETT: It is a little in the original space of the Common field—a little end of it.

119 X Q. Doubtless. I think Mr. Cozens once said something less than an acre. It would come in the line of this line extended?

A. Through there.

Redirect examination by Mr. HENDERSON:

1 Q. Mr. Cozens, will you explain to the court, if you found these marks down here indicating the corners, why it is that you put the corners out there—why on your judgment you run the surveys out there?

A. Because I found cultivation all out there.

2 Q. On the original common-field lots?

A. On the original common-field lots, the original cultivation there.

3 Q. In taking your evidence as to the actual inhabitation and cultivation, did you find it extended out there?

A. I did.

4 Q. And therefor-, seeing the common-field lots down here run out as far as that——

A. I will show what I found. This end here was covered with timber across there. From here to there it was natural prairie; from here there it was all natural prairie until you came to the Corneau spring. That represents three little springs, 409 three of them right in there somewhere. Now, from that there was timber until you got over the hill there on the ridge running up. Right in here you got into low ground towards the Mare spring, and there it was all cultivated, natural grade, until you got to where the Hammond house was, on the hill, and then there was a skirt of timber along here, and from here there it was all prairie again, all cultivated; that is where the signs of cultivation were. There were none where the heavy timber was.

5 Q. Did you find any evidence along here of corners in the common-field lots?

A. Only about to here.

6 Q. Only north of this point?

A. Just down about where Olive-street road is.

7 Q. Now, you took the archives and testimony of old men witnesses?

A. Yes, sir.

8 Q. As to their actual cultivation and possession?

A. Yes, sir.

9 Q. And upon that testimony you found that was the true line of the common field?

A. Yes, sir.

10 Q. You now believe that is the true line of the common field?

A. I do.

11 Q. You believe the individual inhabitants cultivated and possessed this field prior to December, 1803?

A. I do.

Mr. MORRISON: Is that the east line you speak of?
Mr. HENDERSON: Both.
Mr. JEWETT: No; the west line, he tells me.

12 Q. Now, I wish to call your attention to the deed of Rufus Easton and wife to Mr. Hammond: "This deed, made this
410 29 of September, 1823, between Rufus Easton, one of the town of St. Charles, in the State of Missouri, and his wife, party of the first part, and Samuel Hammond, of the county of St. Louis, State of Missouri, witnesseth: That the said Rufus Easton and wife, for and in consideration of $1,583 to her in hand paid by the said Hammond, persuant to a certain bond executed by said Rufus Easton to said Hammond and dated the 3rd of September, 1823, they, the said Rufus Easton and wife, grant, bargain, and sell, and by these presents do hereby grant, bargain, sell, and convey and confirm, to said Hammond and to his heirs and assigns forever 240 acres of land, being the whole of the following tract, except 234 acres of land of the said tract conveyed to William H. Ashley, as will appear by deed or record in the recorder's office in St. Louis county: 480 acres of land described in the entry of Joseph Hunot, enters 480 acres of land by virtue of a certificate issued by Frederick Bates, recorder of land titles, to wit, that part of fractional section 17, range 7, being the township in which St. Louis is situated, lying near to the Cul-de-Sac fields, fractional section 18, in the same township, and so much of the east side of the unappropriated part of section 8 of the same township as will make the quantity, which entry is dated June 16th, 1818, signed Joseph C. Brown, for Rufus Easton." Now, that conveys the whole of this claim, as you understand?

A. Except——

13 Q. Except a certain conveyance made to William H. Ashley?

A. Yes, sir.

411 14 Q. There is no deed or record to Ashley; none whatever; the deed conveys the whole claim. Now, taking this description I read to you a moment ago, with Gratiot and Phillipson on the south, Cabanne on the west, and Stokes on the east, known as the Hammond claim under this conveyance, would you have recognized it as the land and located it at the time?

A. Yes, sir.

Mr. JEWETT: You would have recognized it as the whole of the Hammond claim, would you?

A. I would, taking out the 234 acres for Ashley or Stokes.

15 Q. You understand it as taking out the portion to Stokes, don't you?

A. Yes; to Stokes—Stokes meaning Ashley.

16 Q. Ashley meaning Stokes, you mean?

A. Yes.

Testimony of Defendants next called as a witness RICHARD S. DOWLING, who, being duly sworn, testified as follows:

Direct examination by Mr. HENDERSON:

1 Q. Where do you reside?

A. In the city.

2 Q. How long have you lived here?

A. Over 65 years.

3 Q. Were you born here?

A. No, sir.

4 Q. Do you recollect what year you came here?

A. 1817, sir.

5 Q. Did you know Samuel Hammond?

A. I did, sir.

6 Q. Did you know him when he owned a house on what is called the Hammond tract, near the Mare spring or Hammond spring?

412 A. I never saw him at the place in my life, but I know the Hammond spring.

7 Q. Did you know the Hammond house?

A. I did, sir.

8 Q. Do you know whether the spring was known as the Hammond spring?

A. Yes, sir.

9 Q. And what was the house known as?

A. The old French used to call it the Marie spring.

10 Q. After Hammond built his house what was it known as?

A. It was known as the Hammond spring. The house was built there when I knew the place.

11 Q. Did you know Stokes?

A. I did, sir.

12 Q. Did you know Phillipson?

A. Yes, sir.

13 Q. Do you know Gratiot?

A. No; I can't say I did. I knew Harry Gratiot; not his father.

14 Q. Did you know where the Gratiot land lay there?

A. Yes, sir.

15 Q. Do you know where the Phillipson tract laid?

A. That was Rock spring in old times.

16 Q. Do you remember anything of the sale of land made by Sheriff Walker, in 1823, of this Hammond tract?

A. Yes, sir.

17 Q. I will read to you a description, Captain Dowling, in the deed: "A tract of land containing 240 arpents, more or less, bounded on the south by land of Gratiot and Phillipson, on the west by land of John P. Cabanne, and on the east by land of William Stokes and others, and including the big spring known by the name of Hammond spring." Do you know that tract of land out there?

A. Yes, sir.

18 Q. Did you know the parties named here as the boundaries—Stokes, Gratiot, and Phillipson?

413 —. I knew them all except old man Gratiot. I knew Harry Gratiot, who lived on the tract.

19 Q. Did you know the tract of land at that time owned by Hammond—in 1823—out there, or did you have a general idea of it?

A. I never seen Hammond on it. It was called the Hammond tract, and I knew that about 1820 or '21.

20 Q. By this description would you have recognized or been able to recognize the land? Would you have known the land by this description?

A. Yes, sir.

21 Q. Did you know Peter Lindell?

A. I did, sir.

22 Q. How long did he occupy this land out here?

A. I can't say. I never seen him, that I know of, on the lands in my life.

23 Q. Do you know whether he cultivated and possessed and occupied it?

A. I understood so. He had a big pasture out there and a good deal of land.

24 Q. About what time do you remember he first took possession of the land out there?

A. I can't say.

25 Q. Do you know whether he claimed the land under this sheriff's deed or not?

A. I can't say.

26 Q. You can't tell the beginning of his possession?

A. No, sir.

27 Q. Has it been a great many years?

Mr. JEWETT: Haven't we admitted that you have been in possession since 1831?

The COURT: I think the stipulation covers it.

Mr. HENDERSON: I desire to show one other fact that is not in the stipulation.

The COURT: Well, show it.

414 28 Q. You say you do not know at what time the possession commenced; you can't remember that?

A. No, sir.

29 Q. What was the general understanding on the title of this Hammond tract at the time? What was it called at that time here in the neighborhood?

A. It was called the Hammond spring; generally known as that.

30 Q. But was there any land there known as the Hammond land?

A. Why, of course. The house there was considered on Hammond's land.

31 Q. What did he have in this house?

A. Negroes. I never seen Hammond there in my life.

32 Q. These negroes were his?

A. I suppose they were.

33 Q. And it was known as the Hammond tract?

A. Yes, sir.

Cross-Ex.

Cross-examination by Mr. JEWETT, counsel for the pl'ff-:

1 X Q. How old are you, Mr. Dowling?

A. I am going on 77.

2 X Q. You came here in 1815?

A. No, sir; 1817.

3 X Q. How old were you then?

A. 11 years old. I was born on the 6th of May, 1806.

4 X Q. You were 11 years old when you came here?

A. Yes, sir.

5 X Q. In 1817?

A. Yes, sir.

6 X Q. Then you were in 1823, when this land was sold, of course, 17?

A. Yes, sir. From 1820 to 1826 or '7 I used to go through that prairie every summer on horseback.

7 X Q. What for?

A. Hunting cattle and cows.

8 X —. For somebody else? For whom—for your father or who?

A. No, sir; for George Morton.

415 9 X Q. Were you living with him?

A. Yes, sir. I used to go up there to pick strawberries in the spring of the year.

10 X Q. Was it woods—any brush there?

A. Prairie mostly.

11 X Q. A good many trees and bushes?

A. Very little, except when you got west; it was all big timber there.

12 X Q. How many negroes did you ever see around that spring—that house?

A. I don't know whether one, two, or three; I can't say.

13 X Q. How long did that old house stand there before it tumbled down?

A. I can't say how long.

14 X Q. You don't remember when it tumbled down, do you?

A. No. I recollect one night I staid all night there in a storm at a camp-meeting. There came a storm and we all had to take the children in the old house.

15 X Q. What year was that?

A. 1834.

16 X Q. You never had any dealings with Hammond, did you?

A. I don't think I ever spoke to him in my life.

17 X Q. You knew him by sight, as a boy would know a well-known man?

A. I did, sir.

18 X Q. He was a well-known citizen here at that time?

A. He was, and I can tell where he had his office.

19 X Q. Well, he was a well-known citizen here?

A. Yes, sir; well known.

20 X Q. Did you know any of his children at that time?

A. I did not; I knew his nephew, George Hammond.

21 X —. You don't know where he lived at that time, then, 416 do you?

A. Well, he built two houses. I don't know whether he lived there or not.

22 X Q. From personal observation? I don't ask what somebody told you. Did you ever go to his house where he lived?

A. I am not telling anything but what I know from personal knowledge. I don't think I ever seen him in any house except his office, and that was on the west side of Second street, below Walnut.

23 X Q. Then you have no personal knowledge of where his house was?

A. No, sir; I have not.

(By Mr. HENDERSON:)

24 X Q. You mean his residence in the city, do you?

A. Yes, sir.

At this point the court adjourned until to-morrow, October 25th, 1882.

OCTOBER 25TH, 1882.

The hearing of this cause was resumed.

Defendants' counsel offered and read in evidence the testimony of John F. Darby as given at a former trial of this cause.

(From the former trial before Judge Wickham.)

Testimony of Jno. F. Darby.

JOHN F. DARBY, of lawful age, being produced, was sworn, and testified as follows:

By Mr. HENDERSON:

Q. Mr. Darby, did you know the Philipsons who used to live out west of the city here?

A. Yes, sir; I knew the Phillipsons.

Q. Joseph and Simon?

A. Yes, sir.

Q. Do you know what time one of them died?

417 A. Simon was the one, I think, that died first. Old Joe lived a long time afterwards. He used to live down on Third street; he lived a long time afterwards. I think that was Joseph.

Q. Do you recollect whether they had any claims out in the Grand Prairie commons fields?

A. I understood so. I bought that whole Stokes place myself except 15 arpents of the east end of it. I owned it. I mean the Stokes place—the place that was settled by the Stokes, in the En Campe tract.

Q. Well, you owned that land?

A. Yes, sir; I owned that land ever since old Stokes improved it. I came there in the summer of 1820, when old Stokes had just improved it. We had been into town and going out there to Stokes'—

it was a very warm day in June—Samuel C. Owens, who lived after at Independence, and a young man named Mill, who went to Alabama. Owens was killed in the Mexican war. We went out there. Stokes had just built his well, and there was very fine, cool water. Oh, yes; I had known Stokes well. Then after Stokes' death the place was sold to Alexander Macallister, who moved down on the place. Then we sold it about the year 1830 to George Collier, and George Collier lived there until his wife died, in 1835—1834 or '5. Then he sold the whole place, except 50 arpents, which he sold to another party, off the east end of it. I knew that place well. I was very well acquainted with it out there.

Q. You were acquainted with this land out there in 1853, were you?

418 A. Yes, sir; I knew it right along ever since 1820.

Q. Do you know whether, in 1823, Phillipson made any claim to any land out there?

A. Up to 1823 I lived out on my father's plantation there, and we came into town one day; a friend of ours in the country was along, and we brought a lunch with us; we then drove out there to the Hammonds spring. After watering our horses there we ate our lunch. There was a house just above the spring that was said to be Hammond's; that is what they called it; that is what they called it. That is why they called it Hammond springs. I knew the place then, and I have known it pretty much ever since. I knew where John Bofield had his place there—that place where Mr. Cozens called Des Islet. John Bofield's widow married Des Islet, and the land that John Bofield had out came to Des Islet. He had sold it to McPherson—that is, Bofield sold to Macpherson before he died, and then Des Islet occupied it afterwards. I knew that place well.

Q. Did you know it when Des Islet occupied it?

A. Yes, sir; I knew it well. I knew it before that. I knew that John Bofield occupied it.

Q. When did you first know John Bofield to occupy it?

A. He occupied it about the year 1827 or '8.

Q. Was he living on it then?

A. Yes, sir—that is, he used to live in town, but generally Bofield would go out there and plow and cultivate it. I don't know whether there was any house on it.

Q. It was the same land that Des Islets afterwards occupied?

A. Yes, sir.

419 Q. The same that Macpherson afterwards bought?

A. Yes, sir; that Macpherson afterwards bought.

Q. And the same that was occupied by Bofield?

A. Yes, sir. I had owned a piece of land over there in the Motard tract. I knew the lands all along there, all these different pieces of land, being interested myself—that is, way south—and this Chouteau tract came up to the Stokes tract that we bought right up to the line there.

Q. On your south?

A. On my south, and then afterwards he sold it; and there was an old Irishman by the name of Bob Rankin upon what we called

a potato patch. He had planted a great number of potatoes there without any fence around them—a sort of a kind of half-crazy man. I knew those lands up from about 1819 up to 1823—the lands around the Motard tract. In 1819 I was coming into town, and I stopped at this place near what they now call Rock springs. There was no house there then. There was no house from St. Louis until we got out to Cabanne's or out to the old Gratiot place. All was open prairie around, but we could see this place of Bofield's, and there was another one that was said to be, perhaps, Phillipson's, but I didn't know them; didn't see them on the place; didn't know about it.

Q. Where was the Philipson land or the claim that was set up?

A. I only saw a place *off* that was said to be the Phillipsons place.

Q. Where was that place in reference to Hammond
420 springs?

A. Well, it strikes me it was a little to the east or south of that old road.

By Mr. JEWETT:

Q. That is, you mean the house?

A. No, sir; the field. I don't recollect whether there was any house there or not. I left here on the 15th day of September, 1823, to go back to North Carolina to school. I staid there and didn't come back until the year 1825, and then I came back in March or April, 1825.

By Mr. HENDERSON:

Q. Did you know Samuel Hammond?

A. Yes, sir.

Q. From what time did you know him?

A. Well, I used to live in the country, and he lived here, down on 3rd street. There was an old Frenchman lived down there called Bellesary, but went by the name generally of old Alexander, and he had a little tavern down there, and right back of that was where Hammond lived, on one side; and in coming in from the country we would stop there. There was also an old gentleman living in the country by the name of Gabriel Long. We came in together and saw him; talked with Hammond. I was a lawyer, and I had a long talk with Hammond.

Q. Do you know about what time Hammond left here?

A. Yes, sir; he left here in 1824.

Q. Do you know why?

A. I don't know, only I believe there was a writ after him. I believe he went from here back to South Carolina by land—that is, he lived down in Jefferson county, and he had a place down there that he called Belle View. He went off across the Missis-
421 sippi river, in the neighborhood of Herculaneum, and moved clear back to South Carolina, and then afterwards got to be secretary of state there. When Beverly Allen came in as U. S. district attorney, on John Quincy Adams being made President, he

was after Hammond for debt due the United States. He used to tell me that he sent a writ to South Carolina for the marshal to arrest him, but South Carolina standing on her sovereignty rights, they couldn't succeed in arresting him.

By Mr. HENDERSON:

Q. Where did Hammond live? Did he live out on this place—on this land out here, Mr. Darby?

A. He lived down here in this house on 3rd street. I never visited the family. I understood that the family used to go out in summer time into the country and stay there awhile at this spring. Many families in those days used to go out and live in the country during the summer.

Q. Do you know how far it was—the place they occupied—from the spring that was called the Hammond spring?

A. Well, it wasn't far. I recollect when I drove down to the spring. I drove down to the spring there the time Hammond was said to be living there. The house didn't appear to be further, not further than across the street there—right on the hill—a frame house up there.

Cross-examination:

By Mr. JEWETT:

Q. About where Mr. Stokes lived—that was near up about Garrison avenue—Mr. Stokes' house?

A. No, sir.

422 Q. He was that old Englishman?

A. Yes, sir; I wrote the history of him where old Stokes lived. The road that came down from his house was out about where the Wedge house is there now. I have noticed it frequently. There are two locust trees standing there, the last relick of old Stokes. The road was a little to the west, about where the Wedge house is now, and this Wedge house was right up about the middle. It was more than two of these squares would be from the gate up to the house. He had the place cultivated fine.

Q. Was it on the Stoddard tract or on the Au Camp tract—which?

A. Oh, no; it was on the Eustache Peltier tract—right on the corner of Pine street and Elliott avenue.

Q. The Peltier tract is a part of the original location?

A. Stoddard location is a humbug, anyway.

Q. You don't know of Mr. Stokes living anywhere where his tract is?

A. He wasn't living anywhere else but there. They buried him about as far as from here to the planter's house—from there where he lived quiet and alone, like Sir John Moore.

Mr. HENDERSON:

Q. I read to you a description from a deed from the sheriff dated in 1823—the 4th day of November, 1823. He conveys in this deed a tract of land containing 240 arpents, more or less, bounded on the

south by land of Gratiot and Phillipson, on the west by land of John P. Cabanne, and on the east by land of William Stokes.

A. That place included the big spring known as the Hammond spring.

423 Q. This is a deed of this Samuel Hammond land. The judgment was in favor of Roelfe & Chew. (Reads description in deed.) Do you know the tract of land that Hammond owned up there, afterwards conveyed to Stokes?

A. That was what I called the Hammond tract.

Q. Now, in 1823, supposing that Samuel Hammond owned no other land except that, would you have recognized and known that land by this description?

A. That, sir, and the location of the ground I should have recognized as the Hammond tract. I have heard something, perhaps it was hearsay, though, about John Mullamphy being the agent for Relfe & Chew; that is my recollection about it. I knew John Mullanphy well and I knew John K. Walker very well. I think that Walker arrested Hammond for Chew, but he released Hammond upon the order of John Mullanphy, I think, as agent for Relfe and Chew; that is my recollection of it; that is all hearsay.

The COURT: The question was, Could you recognize the tract of land by that description?

A. I think so.

By Mr. HENDERSON:

Q. Would you have been willing to bid on the land on that description?

A. I should count that enough to identify the land.

By Mr. JEWETT:

Q. You would suppose from that description that it covered the Hammond spring?

A. I would, certainly.

Q. Phillipson occupied south of the Hunot survey—what land he had?

A. There was little cultivated there.

424 Q. You don't know anything about the Phillipson land on the side of the Hunot surveys?

A. Only from hearsay.

Q. How old were you in 1823?

A. I was 19 years old.

Q. Well, you had never examined the boundary at all of the Hunot surveys, I suppose, at that time?

A. I never examined the boundaries of any except my own land there.

Q. You never had any occasion to investigate where the Hunot survey was located, I suppose, at that time, had you?

A. No, sir.

Q. Had you any occasion to investigate where the Conway survey was located as early as 1823?

A. No, sir; I had nothing to do with land titles then.

Q. Had you any knowledge of where the Gratiot league tract was in 1823?

A. Yes, sir.

Q. Do you know what it bounded in 1823?

A. In 1823 I had been at Cabanne's and I knew it was the Gratiot tract. Then I knew that the Gratiot tract was subdivided. Pierre Chouteau lived on the Gratiot tract, just this side of the River des Peres. I had been to Cabanne's house as early as 1822—1821 or 1822. In 1823 I know I was there.

Q. What time in 1823 did you say that you left here?

A. 15th September, 1823.

Q. Well, you didn't know at that time, I suppose, where the En Campe tract was, did you?

A. No, sir.

Q. You didn't know who owned the En Campe tract at that time?

A. No, sir; I did not. I knew, though, about the Gratiot tract.

Q. You knew there was a Gratiot tract and that it was south of the Cabanne tract?

425 A. Yes, sir; from this reason: that my brother-in-law, Mr. Lewis, bought a part of the Gratiot tract and lived on it. He bought that, I think, in 1825.

Q. After you returned?

A. After I returned. I found him there when I came back.

Q. At his home? Where?

A. He lived on the River des Peris, on that Gratiot tract.

Q. Then you had a general knowledge that the Gratiot tract was down there by the River des Peres, where your relation lived?

A. Well, I had knowledge more from the Cabannes and the Chouteaus and there where the other part was—this part that was sold by Bofield, I think, to General Gratiot, who was then in the Interior Department at Washington, and he had been trying to sell it some time.

Q. You were not here from Sept., 1823, until 1825?

A. Not until about the last of March, 1825.

Q. At that time you don't know where the Heber tract was, did you—the one that Cabanne afterwards settled on?

A. I understood Cabanne had settled on the Gratiot tract.

Q. The Heber passed into the Gratiot tracts?

A. I brought a suit for the widow up here.

Q. That is, another one?

A. I don't know anything about that. Then I knew where the Cabanne tract was—that it was out there, lying near where our tract was, or not far away.

Q. Did you know that there was any such thing as Hunot New Madrid location survey?

A. No, sir. I knew this: that there was a great deal of dealing in New Madrid claims.

426 Q. But you didn't know anything about the Hunot New Madrid location about that time?

A. No, sir.

Q. You didn't know anything about the Conway New Madrid location about that time, did you?

A. No, sir. I knew that old Stokes was on an New Madrid survey.

By Mr. HENDERSON:

Q. You became acquainted in 1823, and since that time you were acquainted with this Hammond tract?

A. Well, I got acquainted, more or less, from personal interest, and engaged in fighting a great number of lawsuits for a number of years. I used to be either on the one side or the other. Gamble & Bates would be against me, then Geyer & Beverly Allen would be, and so on. I was engaged in nearly all these suits around about and got a general knowledge, and since that time I have come to know that that was the Hammond tract.

Q. Now, taking your previous knowledge of the Hammond tract, and knowing all the lands around it as in 1823, you would have understood where it was?

A. As I said before, I should have identified it by the spring and the other location- around.

Q. I ask you upon the knowledge that you had in 1823.

A. No, no.

By Mr. JEWETT:

Q. Well, you would suppose from the spring that it covered the land around the spring?

A. Yes, sir, of course; that is the place where we would stop and get a drink of water.

427 Q. And if an advertisement said that the land took in the Hammond spring you would, of course, suppose it was the land around the Hammond spring?

A. Yes, sir.

Q. You had no idea how far out Hammond's land was or whether he had any land out there at that time?

A. No more than I had about the Cabanne & Gratiot tracts.

Q. Did you ever hear that Hammond ever did anything more than just live out there on that spring?

A. No, sir; that is all I heard.

Q. You didn't know he claimed any part of the Hunot claim?

A. I don't know anything about the origin of his claim or of any other claim.

Defendants' counsel next offered in evidence a deed by the United States marshal to John O'Fallon, dated September 8th, 1825, recorded in Book N, page 93.

Defendants' counsel next offered the book from the recorder's office to show copy of a deed from Hammond by the sheriff to Relf and Chew, recorded in Book L.

(Pl'ff objected as incompetent and irrelevant, because the def'ts have in their possession the original deed. Objections overruled & pl'ff duly excepted.)

Defendants' counsel next offered a deed dated the 20th of June, 1873, by and between Mary A. Washington, widow of James H. R. Washington, deceased, and only living child and sole heir of the late Col. Samuel Hammond, to John F. Darby, recorded October, 1880.

428 Mr. HENDERSON (to Mr. Jewett): You admit the death of Archibald Gamble, Thompson Douglas, and John R. Walker?

Mr. JEWETT: Yes, sir.

Mr. HENDERSON: We have depositions attempting to show that Morrison had notice of that deed.

Mr. JEWETT: Morrison's deed was immediately recorded on his receipt of it.

Testimony of defendants next called as a witness JAMES L. D. MORRISON, who, being sworn, testified as follows:

Direct examination by Mr. HENDERSON:

1 Q. Are you one of the parties in this case?

A. I desire to explain, first, so that the court may understand the relation that I occupy. I am a party in the case and my own sole counsel in the case, and am now made a witness.

2 Q. About what amount of interest do you claim in this suit, Mr. Morrison?

Counsel for the plaintiff objected on the ground of a privileged question, but did not press the objection.

3 Q. What proportionate interest do you claim or consider yourself the owner of in this suit?

A. I think in the neighborhood of 41 per cent. The deeds here disclose that, with the depositions as to the respective interests of the parties who deeded to me. I think 41 per cent. of the entirety.

4 Q. Will you be good enough to state how and when you purchased your interests?

A. The deeds will show that. They are all of record.

429 Mr. HENDERSON: I wish to show that Mr. Morrison knew the condition of this land; that he knew that this was a title not worth buying, and that he paid nothing for the title.

The COURT: Ask the question first.

5 Q. Did you purchase a title from Mrs. Mary A. Washington in this case?

A. I did, sir.

6 Q. How much of her interest did you purchase?

A. Two-thirds.

7 Q. How much did she pretend to own?

A. One-fifth of the entirety.

8 Q. One-fifth of all?

A. Yes, sir.

9 Q. How much did you give her for her interest?

A. The deed will show that fact.

10 Q. Can't you answer?

A. Yes, sir.

11 Q. Answer.

A. But I object to answering it without the deed being before me.

The COURT: If you remember, state the amount.

A. Well, I think $100, sir.

12 Q. How many acres of land did you purchase or were you purchasing an interest in?

A. That is a question we are now trying, sir. I don't know how much I did purchase. That is the question we are now trying—how many acres were in it.

13 Q. How many acres do you claim in this Washington purchase on the Hunot claim?

Mr. JEWETT: That is of record.

The COURT: He is simply asking his idea of the quantity of land in that description. I see no objection to the opinion.

A. I understood at the time if the common-field lots were
430 not over it—if they were void in their location, and there was as much land in the property as there was described clear of the common-field lots—it would by 240 acres.

14 Q. Did you understand the common-field lots did interfere?

A. I did not understand anything about it at that time, for I had never investigated the thing whether they interfered or not.

15 Q. What was that land worth an acre at the time you purchased it of Mrs. Washington?

A. Oh, I don't know. In the condition of the title you would say it was worth nothing.

16 Q. What do you say?

A. I suppose in the condition of the title you would say it was worth nothing, and I don't know.

17 Q. I am after what you say—not what I say. What was the marketable value of that land worth with a good title; that's what I ask you; what was it worth an acre?

Counsel for the defendant objected as immaterial and irrelevant. The court sustained the objection.

18 Q. You gave her, then, you say, $100; did you pay it to Mrs. Washington?

A. Yes, sir.

19 Q. In person?

A. Yes, sir—that is, I paid it in this way in person: I gave Mrs. Washington a check for $100 here in St. Louis afterwards, and would have paid it to her at the time I took the deed if I had had the money with me, but I was in Georgia and had not the money with me; I afterwards paid it to her in a check to her lawyer;
431 she told me she owed her lawyer, and I must pay her $100 to pay her lawyer for some services which he had rendered her.

20 Q. Then have you paid her anything else since that time for that land?

A. But that $100?

21 Q. Yes.

A. Well, sir, if you will let me see that deed—that Washington deed—I will answer. (Paper shown.) I will see if there is anything else mentioned in the deed. I do not recollect anything else. I haven't seen this deed for some time, though. "This deed, made and entered into this 16th day of May, 1874, by and between Mary A. Washington, of the city of Macon, State of Georgia, and James L. D. Morrison, of the county of St. Louis, State of Missouri, party of the second part, witnesseth: That the said party of the first part, for and in consideration of $100 paid by the said party of the second part, the receipt whereof is hereby acknowledged, do by these presents convey, confirm, assign, and quitclaim to the said party of the second part," so and so. Now, then, you ask me if I paid any different or additional consideration from this. That question I object to as contrary to the deed and against a well-recognized principle of law. I object, as being the attorney of Mrs. Washington, to this answer on the ground that where the pecuniary consideration is expressed in the deed the authorities are entirely clear, where it is established that the consideration was paid, that you cannot enter into the question whether any other consideration was paid, and therefore I object to the question, unless the
432 court rules me to answer it. I am in a peculiar position, your honor will see. It is a well-settled rule that when the consideration is expressly stated in the deed you cannot enter into proof whether any other consideration was paid. It is so decided in a number of cases, and for that reason I object to answering whether any consideration at all, except that expressed in the deed, of $100, was paid.

The court overruled the objection, and instructed the witness to answer whether anything else was paid.

A. Nothing else, sir; $100 is all I paid her.

22 Q. Now, did she convey to you direct two-thirds of her interest—that is, two-thirds of a fifth, making a 15th?

A. That deed says so.

23 Q. Therefore she retained one-third of a fifth?

A. Yes, sir.

24 Q. Now, did you at the time, and as a part of the consideration of that deed, make an agreement with her to prosecute the suit in her behalf for that remaining one-third?

Counsel for the plaintiff objected to the question. The court sustained the objection; to which ruling defendants' counsel then and there excepted.

25 Q. I have a letter I wish you to identify. Did you write that letter?

A. I reckon I did, from the looks of it. That looks like my writing. Yes, sir; I wrote that letter.

26 Q. (Another letter shown the witness.) Did you write that letter?

A. Yes, sir; that is the truth, too; every line of it.

27 Q. Every word of it?

A. I guess so; I haven't read the balance of it, but I never write anything but what is true.

433 The COURT: Do you offer this letter?

Mr. HENDERSON: Yes, sir.

Mr. JEWETT: This letter is dated February 10th, 1881, after the deed to Darby was recorded.

Plaintiffs' counsel objected to the introduction of the letter, and the court sustained the objection.

28 Q. Did you write to Mrs. Washington that letter also?

A. Yes, sir; I wrote that letter; that is mine.

Defendants' counsel offered to read the letter in evidence.

Plaintiffs' counsel objected, and the court sustained the objection.

Defendants' counsel next offered letters of February 8th, 1881; May 20th, 1876, and March 26th, 1879.

Mr. JEWETT: She was his client during all those times, and these are private communications between attorney and client.

The court sustained the objection.

Mr. HENDERSON: Did I understand your honor as overruling this testimony not only on the ground of champerty, but also as showing that Morrison was cognizant of the condition of this title?

The COURT: Certainly; I rule out the letters.

Mr. HENDERSON: Not that; but I propose to show by the testimony of Mr. Morrison that Mr. Morrison was directly cognizant of all these deeds and their validity; that he purchased these interests and paid nothing for them, and all that he was to pay was conditional on success; that he paid not exceeding $100 to any of them.

The COURT: I will adhere to my ruling. I do not think
434 incompetent testimony is made competent because it may be made useful on other branch of the case.

To which ruling defendants' counsel then and there excepted.

Testimony of defendants next called as a witness MONROE R. COLLINS, who, being duly sworn, testified as follows:

Direct examination by Mr. HENDERSON:

1 Q. How long have you lived in St. Louis?

A. I have lived in St. Louis since 1848, with the exception of about 18 months, when I was absent.

2 Q. Did you know Peter Lindell?

A. Yes, sir.

3 Q. How long after you came here was it before you became acquainted with him?

A. About 1850.

4 Q. Do you know the Hunot claim?

A. Yes, sir.

5 Q. Have you any interest in it, and did you ever have any interest in it?

A. As a legal owner, sir, my wife was the heir-at-law.

6 Q. Was one of the heirs-at-law?

A. At law; yes, sir.

7 Q. Were you cognizant of the title to that land—that is, the conveyance from Walker—the original sheriff's title of Walker to this land out there? Did you know anything about it? Did you ever hear it discussed in the family?

Counsel for the plaintiff- objected to the question.

8 Q. Did you ever hear anything said about it by Mr. Lindell?

Counsel for plaintiff- objected to any declaration of Lindell.

The court overruled the objection.

A. Please give the question again.

435 9 Q. Did you ever hear Mr. Lindell talk about the title to that land out there? Did you know anything about the title as coming from him while he was in possession of it? Was he in possession, during the time you knew Lindell, of the Hunot claim?

A. I have known that Hunot claim since about 1852 or 1853—that is, I have known the land. I have heard Mr. Lindell tell how he came in possession of it.

10 Q. Well.

A. It was at a sheriff's sale.

11 Q. What sheriff's sale?

Mr. JEWETT: Did you ever hear Mr. Lindell say?

WITNESS: I repeat what I say. I have heard Mr. Lindell speak of his ownership or possession as having come through a sheriff's sale.

12 Q. Well, against whom—do you remember?

A. I do not think, sir, that he mentioned anything of the kind at the time; I don't recollect it. Mr. Lindell used to talk to me a good deal about his affairs.

13 Q. Did you ever hear him mention Samuel Hammond?

A. Not to my present recollection.

14 Q. You know he claimed under a sheriff's deed?

A. Yes, sir; by what he told me.

15 Q. He said a sheriff's deed?

A. He said a sheriff's deed.

16 Q. Do you know whether large improvements were made there by Mr. Lindell; whether the Baker or Lindell heirs made improvements on that property; whether Lindell himself or his heirs?

A. What lot are you asking about?

17 Q. The one Levin Baker had—lot 50; take that.

A. Levin Baker put that house there himself.

436 18 Q. What is the value of the improvements—do you know?

Mr. JEWETT: We are not on the question of betterments.

Counsel for the defendant- objected.

The court overruled the objection; to which ruling defendant's counsel then and there excepted.

A. Mr. Baker built at two different times. He made an addition

to the house after his first building. I know it cost him a great deal of money, but as to the actual cost I don't know.

19 Q. About what was the value of the improvements that were put there by Levin Baker?

A. I can only give you guess-work.

The COURT: If the witness don't know, the question may be withdrawn.

WITNESS: Well, it cost him not less than $10,000.

20 Q. That is on lot 50?

A. That is on Lindell avenue. I don't know exactly what it cost him, but I know it is a valuable improvement.

Witness retires.

Defendants' counsel next offered a deed from Mary A. Washington to Sylvester J. Fisher, dated the 5th of February, 1881.

Defendants' counsel next offered in evidence a deed from Sylvester J. Fisher to Robert B. Wade, dated the 11th of April, 1881.

Defendants' counsel next offered in evidence a deed from Robert B. Wade to Johnson, dated the 10th of March, 1882.

437 *Rebuttal.*

Rebutting testimony.

Plaintiffs introduced in rebuttal the following evidence:

First. An act passed by Congress on the second of March, 1867, entitled An act, &c.

Act of Congress, March 2, '67.

Chap. CLIII.—An act to provide for the more efficient government of the rebel States.

Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said rebel States shall be divided into military districts and made subject to the military authority of the United States as hereinafter prescribed and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama and Florida the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.

SEC. 2. And be it further enacted, That it shall be the duty of the President to assign to the command of each of said districts
438 an officer of the army, not below the rank of brigadier-general and to detail a sufficient military force to enable such

officer to perform his duties and enforce his authority within the districts to which he is assigned.

SEC. 3. And be it further enacted, That it shall be the duty of each officer assigned as aforesaid, to protect all persons in their rights of person and property, to suppress insurrection, disorder and violence, and to punish or cause to be punished, all disturbers of the public peace and criminals; and to this end he may allow local civil tribunals to take jurisdiction of and to try offenders, or, when in his judgment it may be necessary for the trial of offenders he shall have power to organize military commissions or tribunals for that purpose, and all interference under color of State authority with the exercise of military authority under this act, shall be null and void.

SEC. 4. And be it further enacted, That all persons put under military arrest by virtue of this act shall be tried without unnecessary delay, and no cruel or unusual punishment shall be inflicted, and no sentence of any military commission or tribunal hereby authorized, affecting the life or liberty of any person shall be executed until it is approved by the officer in command of the district, and the laws and regulations for the government of the
439 army shall not be affected by this act, except in so far as they conflict with its provisions: Provided, That no sentence of death under the provisions of this act shall be carried into effect without the approval of the President.

SEC. 5. And be it further enacted, That when the people of any one of said rebel States shall have formed a constitution of the government in conformity with the Constitution of the United States in all respects, framed by a convention of delegates elected by the male citizens of said State twenty-one years old and upward, of whatever race, color, or previous condition, who have been resident in said State for one year previous to the day of such election, except such as may be disfranchised for participation in the rebellion or for felony at common law, and when such constitution shall provide that the elective franchise shall be enjoyed by all such persons as have the qualifications herein stated for electors of delegates, and when such constitution shall be ratified by the majority of the persons voting on the question of ratification who are qualified as electors for delegates, and when such constitution shall have been submitted to Congress for examination and approval, and Congress shall have approved the same, and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the Constitution of the United States, proposed by the Thirty-ninth Congress, and known as article fourteen, and when said
440 article shall have become a part of the Constitution of the United States said State shall be declared entitled to representation in Congress and Senators and Representatives shall be admitted therefrom on their taking the oath prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: Provided, That no person excluded from the privilege of holding office by said proposed amendment to the Constitution of the United States, shall be eligible to election as a member of the convention to frame a constitution for any of said rebel

States, nor shall any such person vote for members of such convention.

SEC. 6. And be it further enacted, That, until the people of said rebel States shall be by law admitted to representation in the Congress of the United States, any civil governments which may exist therein shall be deemed provisional only, and in all respects subject to the paramount authority of the United States at any time to abolish, modify, control, or supersede the same; and in all elections to any office under such provisional governments all persons shall be entitled to vote and none others, who are entiled to vote, under the provisions of the fifth section of this act; and no person shall be eligible to any office under any such provisional governments who would be disqualified from holding office under the pro-
441 visions of the third article of said constitutional amendment.

SCHUYLER COLFAX,
Speaker of the House of Representatives.
LAFAYETTE S. FOSTER,
President of the Senate pro tempore.

IN THE HOUSE OF REPRESENTATIVES, *March* 2, 1867.

The President of the United States having returned to the House of Representatives, in which it originated, the bill entitled "An act to provide for the more efficient government of the rebel States," with his objections thereto, the House of Representatives proceeded, in pursuance of the Constitution, to reconsider the same, and resolved that the said bill do pass, two-thirds of the House of Representatives agreeing to pass the same.

Attest: EDW'D McPHERSON,
Clerk of H. R., U. S.

IN SENATE OF THE UNITED STATES, *March* 2, 1867.

The Senate having proceeded, in pursuance of the Constitution, to reconsider the bill entitled "An act to provide for the more efficient government of the rebel States," returned to the House of Representatives by the President of the United States, with his objections, and sent by the House of Representatives to the Senate, with the message of the President returning the bill, Resolved, That
442 the bill do pass, two-thirds of the Senate agreeing to pass the same.

Attest: J. W. FORNEY,
Secretary of the Senate.

Plaintiffs next offered in evidence a proclamation of the President of the United States of April second, 1866.

(Need not insert; may be read from the statutes.)

Plaintiffs' counsel next offered in evidence a letter from the land department, dated April 6th, 1860, addressed by John S. Wilson to the recorder of land titles, St. Louis, Missouri.

Letter from Gen'l Land Office to Recorder of Land Titles, Ap'l 6, '60.

GENERAL LAND OFFICE, *April* 6, 1860.

SIR: This office has drawn up the patent for what is known as the Hunot New Madrid claim, designated as survey No. 2500, in T. 45 N., of R. 7 E., of 5th p. md., Mo.; but, looking to the fact that in the papers received with Surveyor General Loughborough's report of 10th Febr'y, 1859, the opponents to the survey either contemplated or proprosed to seek by appeal the highest executive decision in the premises, the case was submitted to the honbl. Secretary of the Interior on the 22d December, 1859, for his revision, &c.

On the 5th inst., in a communication to this office—copy herewith—he decides as follows:

"If the parties who protest against issuing the patent, after having been advised of our decision, do not within a reasonable time
443 thereafter take an appeal in the matter, the patent should be delivered to the claimant."

In view of said decision, you are instructed to notify the parties opposed to the preparation of said patent that if no appeal is filed in this office on or before the 7th of May next said patent will be sent to you for delivery to the party entitled to receive it. Enclosed is our printed rules respecting appeals.

Very respectfully, your ob't serv't,

JOS. S. WILSON,
Commissioner.

A. Renard, Esqr., recorder of land titles, St. Louis, Mo.

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of a letter from Jos. S. Wilson, Commissioner, to A. Renard, recorder of land titles, dated April 6th, 1860, as the same now remains on file in this office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said office, at the city of Jefferson, this 20th day of February, 1880.

JAS. E. McHENRY,
Register of Lands.

444 Plaintiffs' counsel next offered and read in evidence a letter of the Secretary of the Interior, dated November 12th, 1860, addressed to the Commissioner of the General Land Office, at Washington:

Letter of Secr'y of Int. to Com'r Gen'l Land Office, Nov. 12, '60.

DEPARTMENT OF THE INTERIOR, *November* 12, 1860.

SIR: Your report of the 10th May last submitted to me the case wherein C. C. Whittlesey, as attorney for the Pacific R. R. Company, appealed from your decision in favor of issuing the patent upon the location and survey No. 2500 of New Madrid warrant No. 161, issued

to Joseph Hunot. After an examination thereof my decision is in favor of issuing the patent.

The original warrant was duly issued in Aug., 1816, and the survey made June 23d, 1819. The survey varied somewhat from the application to locate, but as the power to locate was with the surveyor general, who acted for the United States, as well as for the claimant, neither the Government nor third persons whose rights are not affected by the variance can interpose that objection where the party is satisfied and the location is made in compliance with the law.

It is contended by the attorney for the railroad that the
445 location is void, inasmuch as the survey was not certified to the recorder of land titles at St. Louis till January, 1833; and the 2d section of the act of 26 April, 1822, places a limitation upon the location and requires the survey to be returned to the recorder prior to April 26th, 1823. (See Stat., vol. 3, p. 668.) The cases he cites—Bagnall *vs.* Broderick, 13 Peters, p. 436, and Lescieur *vs.* Price, 12 Howard, p. 74, and also those of Burry *vs.* Gamble, 3d Howard, p. 51, and Hale *vs.* Gaines, 22d Howard, p. 159—do establish the proposition that until a notice or return of the survey is presented to the recorder of land titles at St. Louis and recognized by him it can have no force as against the United States, as it is incomplete under the requirements of the New Madrid act of 17th February, 1815; but this survey was returned to the recorder in January, and a patent certificate issued in February, 1833, and the location then became complete. If otherwise in accordance with law, the patent should issue upon the survey.

The act of 9th April, 1818, limited the time of applying for warrants under the act of 17th Feb., 1815, to the 1st January, 1819; and the 2d section of the act of 26th April, 1822, required that all warrants not located prior to the date of that act "shall be located within one year after the passage of this act."

Now, as the limitation in the act of 1818 is upon the acts and discretion of the claimants under the act of 1815, I am dis-
446 posed to regard the act of 1822 also in that light. When that limitation expired there appears to have been nothing remaining to be done by Hunot or the claimants under him to complete his location. His warrant appears to have been returned to the officer and to have been on file with the survey. He had surrendered his land at New Madrid or offered to do so, and it only remained with the officers of the United States to act in order to close the transaction. Hunot could not, at any time after the execution of the survey by the deputy surveyor and the filing and record thereof in the office of the surveyor general, have withdrawn his warrant for relocation without the concurrence of the executive officers entrusted with the completion of his title; and, as the warrant and survey remained on file when the act of 1822 expired, I do not think the limitation therein affects the rights of the claimants after the subsequent favorable action of the surveyor general and recorder in the case, although that action was had subsequent to the 23d April, 1823, nor do I think that the arguments and decisions

of the Supreme Court of the United States in Easton *vs.* Salisbury, 21st Howard, 431, and Hale *vs.* Gains, 22 Howard, p. 159, are in conflict with this construction of the limitation in question. The decision in Barry *vs.* Gamble I regard as sustaining the view I had taken.

447 There is an allegation by some of the parties opposing the survey that the land was not liable to location; but, as no specific ground for such allegation is set forth, and your report states no objection of this kind, it is presumed to be untenable.

For many years this patent appears to have been withheld by your office because the original survey included some parcels of land which have been found to constitute parts of confirmed private claims. The claimant and attorney for the survey No. 2500 have recently assented to the reform of its lines and the introduction of proper exceptions in the patent so as to exclude the land embraced in such private claims; and I do not doubt the power of your office to make the corrections, with such assent, notwithstanding the intervening grant of lands to the State of Missouri for railroad purposes by act of Congress approved June 10, 1852.

Whatever title may exist in the State or her assignees appears under that law to be susceptible of assertion in the courts, and the issuance of the patent on the New Madrid location appears to be just and legal and necessary in order that the claimants under it may have a standing of the like dignity. The patent and papers submitted with your report are now returned.

Very respectfully, your ob't serv't,

J. THOMPSON, *Secretary.*

Hon. Jos. S. Wilson, Commissioner of the General Land Office.

448 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *December* 28, 1874.

I, S. S. Burdett, Commissioner of the General Land Office, do hereby certify that the annexed are true and literal exemplifications from the records of the General Land Office of a decision of the Hon. Secretary of the Interior, dated November 12, 1860, relative to the claim of Joseph Hunot, New Madrid location certificate No. 161, and a letter dated Nov. 12, 1860, to the U. S. recorder of land titles at St. Louis, Mo., transmitting the patent on survey No. 2500 in favor of Joseph Hunot or his legal representatives.

[SEAL.] In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

S. S. BURDETT,
Commissioner of General Land Office.

Plaintiffs' counsel next offered and read in evidence a communication from the Commissioner of the General Land Office to the recorder of land titles, St. Louis, Missouri, dated November 12th, 1860, together with the marginal note on the same, dated the 17th of November, 1860.

Letter of Com. Gen'l Land Office to Recorder Land Titles, Nov. 12, '60.

DEPARTMENT OF THE INTERIOR, *November 12th*, 1860.

449 SIR: Your report of the 10th May last submitted to me the case wherein C. C. Whittlesey, as attorney for the Pacific R. R. Company, appealed from your decision in favor of issuing the patent upon the location and survey No. 2500 of New Madrid warrant No. 161, issued to Joseph Hunot. After an examination thereof my decision is in favor of issuing the patent.

The original warrant was duly issued in Aug., 1816, and the survey made June 23d, 1819. The survey varied somewhat from the application to locate, but as the power to locate was with the surveyor general, who acted for the United States, as well as for the claimant, neither the Government nor third persons whose rights are not affected by the variance can interpose that objection where the party is satisfied and the location is made in compliance with the law.

It is contended by the attorney for the railroad that the location is void, inasmuch as the survey was not certified to the recorder of land titles at St. Louis till January, 1833, and the 2d section of the act of 26th April, 1822, places a limitation upon the location and requires the survey to be returned to the recorder prior to April 26th, 1823. (See Stat., vol. 3, p. 668.) The cases he cites, Bagnull *v.* Broderick, 13 Peters, p. 436, and Lescieur *vs.* Price, 12 Howard, p. 74, and also those of Barry *vs.* Gamble, 3d Howard, p. 51, and Hale *v.* Gains, 22d Howard, p. 159, do establish the proposition
450 that until a notice or return of the survey presented to the recorder of land titles at St. Louis and recognized by him it can have no force as against the United States, as it is incomplete under the requirements of the New Madrid act of 17th February, 1815; but this survey was returned to the recorder in January and a patent certificate issued in February, 1833, and the location then became complete. If otherwise in accordance with law the patent should issue upon the survey.

The act of 9th April, 1818, limited the time of applying for warrants under the act of 17th Feb., 1815, to the 1st January, 1819, and the 2d section of the act of 26th April, 1822, required that all warrants not located prior to the date of that act "shall be located within one year after the passage of this act." Now, as the limitation in the act of 1818 is upon the acts and discretion of the claimants under the act of 1815, I am disposed to regard the act of 1822 also in that light. When that limitation expired there appears to have been nothing remaining to be done by Hunot or the claimants under him to complete his location. His warrant appears to have been returned to the officers and to have been on file with the survey. He had surrendered his land at New Madrid, or offered to do so, and it only remained with the officers of the United States to act in order to close the transaction. Hunot could not at any time after the
451 execution of the survey by the deputy surveyor and the filing and record thereof in the office of the surveyor general have withdrawn his warrant for relocation without the concurrence of the

executive officers entrusted with the completion of his title, and as the warrant and survey remained on file when the act of 1822 expired, I do not think the limitation therein affects the rights of the claimants after the subsequent favorable action of the surveyor general and recorder in the case, although that action was had subsequent to the 23d April, 1823, nor do I think that the arguments and decisions of the Supreme Court of the United States in Easton *vs.* Salisbury, 21st Howard, 431, and Hale *vs.* Gains, 22d Howard, p. 159, are in conflict with this construction of the limitation in question. The decision in Barry *vs.* Gamble I regard as sustaining the view I have taken.

There is an allegation by some of the parties opposing the survey that the land was not liable to location, but as no specific ground for such allegation is set forth and your report state- no objection of this kind it is presumed to be untenable.

For many years this patent appears to have been withheld by your office because the original survey included same parcels of land which have been found to constitute parts of confirmed private claims.

452 The claimant and attorney for the survey No. 2500 have recently assented to the reform of its lines and the introductions of proper exceptions in the patent so as to exclude the land embraced in such private claims, and I do not doubt the power of your office to make the corrections with such assent, notwithstanding the intervening grant of lands to the State of Missouri for railroad purposes by act of Congress approved June 10, 1852.

Whatever title may exist in the State or her assignees appears, under that law, to be susceptible of assertion in the courts, and the issuance of the patent on the New Madrid location appears to be just and legal and necessary in order that the claimants under it may have a standing of the like dignity.

The patents and the papers submitted with your report are now returned.

Very respectfully, your ob't servant,

J. THOMPSON, *Secretary.*

Hon. Jos. S. Wilson, Commissioner of the General Land Office.

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct transcript of a copy of a letter from J. Thompson, Secretary of the Interior, to Jos. S. Wilson, Commissioner of the General Land Office, as the same remains on

453 file in this office.

In testimony whereof I have hereunto set my hand

[SEAL.] and affixed the seal of said office, at the city of Jefferson, this first day of April, 1880.

JAS. E. McHENRY,
Register of Lands.

GENERAL LAND OFFICE, *November 12th*, 1860.

SIR: I transmit herewith the patent, as recorded in vol. 11, pages 405 to 413, in favor of Joseph Hunot or his legal representatives for the New Madrid claim (location certificate No. 161) for survey No. 2500, in township 45 north, range 7 east, 5th principal meridian, Missouri.

You will please note the issue on your records and then deliver the patent.

I also enclose herewith a copy of the Secretary's decision of this date affirming the action of this office in the issue of the patent.

I have apprised the Hon. Edward Bates, who has written to us in the matter, of this transmission. The purport of the decision you will make known to the appellants and all concerned.

Very respectfully, &c., JOS. S. WILSON,
Commissioner.

A. Renard, Esqr., recorder of land titles, St. Louis, Missouri.

17TH NOV., 1860.

Received the patent.

EDW'D BATES.

454 STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of a letter from Jos. S. Wilson, Commissioner of the General Land Office, to A. Renard, recorder of land titles, as the same remains on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at the city of Jefferson, this first day of April, 1880.

[SEAL.]

JAS. E. McHENRY,
Register of Lands.

Plaintiffs' counsel next offered in evidence certificate of the baptism of *the* John B. Hortiz, legitimate son of Joseph Alvarer Hortiz and Margaret ——, dated the 12th of March, 1793:

Certificate of Baptism of J. B. Hortiz.

I, Fr. X. Weiss, a pastor of the Roman Catholic Church of St. Genevieve, in the State of Missouri, do certify that it is customary in the Cath. Church to cause to be kept a register of baptism- and births; and I further certify that I am the keeper of said register for the parish of St. Genevieve, in the State aforesaid, and pastor of said church at said place, and that the following is a true copy of an entry in said register of baptisms and births and extracted therefrom by me, to wit:

455 Le 12 de Mars 1793, j'ai baptise Jean Baptiste Hortise, fils legitime de Joseph Aleves Hortise et de Margurith Bequette, ne' la veille. Souparain a ete le Sieur Francois Valle, commandant et officier de milicedece post, La Marian Louise Valle, veuve Leclere soussignes.

DE SAINT PIERRE, *Cure.*

STATE OF MISSOURI, } ss:
County of St. Genevieve, }

I, pastor of the Roman Catholic Church at the city of St. Genevieve, State of Missouri, affirm and say that the foregoing certificate subscribed, with its name and signature, is true in substance and in fact, and that the extract from the register of baptisms and births contained and set forth therein is a true copy taken from said register.

FR. X. WEISS,
Pastor of the Rom. Cath. Church at St. Genevieve.

Subscribed and affirmed to before me this January 9th, 1875.
[SEAL.] JULES B. GUIGNON,
Notary Public, St. Genevieve County, Missouri.

Translation.

The 12 of March, 1793, I have baptized John Baptiste Hortise, legitimate son of Joseph Alverez Hortise and of Margaret Becquette, born in this town. His godfather was Mr. Francois Valle, commandant and officer of military of this post; the godmother, Louise Valle, widow Leclive, undersigned.

DE SAINT PIERRE, *Cure.*

456 Plaintiffs' counsel next offered in evidence a certificate of baptism of John B. Hortiz' twin brothers and sisters, which he testifies to in his deposition:

Certificate of Baptism of Eleonore & B. Hortiz.

Le Bapteme de Elenore Hortiz, Bridige Hortiz.

L'an mil sept cent quatre vingt-dix, le douxieme gour de December, le Toussigne, ai baptise Brigide Elenore Jumelles, nees le divieme du present, du legitime de Joseph Hortiz et de Margarite, tes pére et mere, se parain de Brigide a ete Antoine Kenzl, represente par Sabriel Becquet et la maraine Marguerite Blondeau, femme de Guilliaum Herbert Le Conte, et le parrain de Elenonore a ete Pierre Guinel et al marraine Marguerite Parada, veuve de Jean Pierre Foreli—dont trois ont signe avec noi et le dernier ne L'eachaut pas eivére a declare ne L'cavoir signer.

Lu foi de quoi—

LEDRU MISSURE, *Pretre.*

Le Mort de Brigide Hortiz.

L'anmil sept cent quat-e vingt-dix, le 18 gour de Decembre, le soussigne, ai inhume dans le cumtiere de cette paroisse Brigide Hortiz—decedee du gour precédant, agree de 8 gours; en foi de quoi—

LEDRU MISSURE, *Pretre.*

457 STATE OF MISSOURI, }
County of St. Louis. }

I, the undersigned, P. McEvoy, hereby certify under oath and say that by the ordinance of the St. Louis cathedral registers are required to be kept of baptisms and interments, and that I am the keeper of said registers, and that the above are truly transcribed from the said registers kept as above for said church.

P. McEVOY, *Priest.*

Sworn to this 14th day of January, A. D. 1875.

[SEAL.] ROBERT H. BETTS,
Notary Public, St. Louis Co., Mo.

Translation.

The Baptism of Eleonore Hortiz, Brigide Hortiz.

The year one thousand seven hundred and ninety, the twelfth day of December, I, undersigned, have baptized Brigide and Eleonore Jumells, both born the tenth of the present, of the legitimate marriage of Joseph Hortiz and of Marget Bequet, their father and mother; the godfather of Brigide was Antoine Kenzl, represented Gabriel Bequet, and the godmother Marguet Blondeau, wife of William Hebert Le Conte; and the godfather of Eleonore was Pierre Guenel and the godmother Margaret Barada, widow of Jean Pierre Pouli, of whom three have signed with me, and the last, not knowing how to write, have not signed. In token of which—

LEDRU MISSURE, *Pretre.*

458 *Le Death of Brigide Hortiz.*

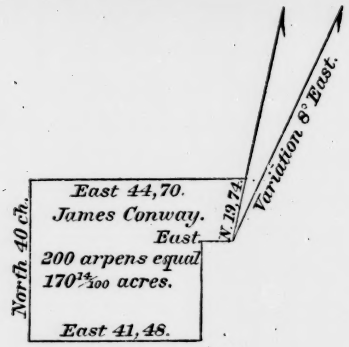
The year one thousand seven hundred and ninety, the eighteenth day of December, I, undersigned, have buried in the cemetery of this parish Brigide Hortiz, died the preceding day, age of eight days. In token of which—

LEDRU MISSURE, *Pretre.*

Mr. JEWETT: Their baptism corresponds with the other, showing he has made a mistake in his age, and that he is two years younger than he swears he is, and that he was a mere baby when he undertook to swear about these common fields.

Plaintiffs' counsel next offered in evidence United States survey of James Conway, which is one of the surveys that bound the Hunot land, number 2712 and certificate 348, James Conway or his legal representatives, dated the 23rd of June, 1819.

Survey No. 2712.



Scale, 40 ch. to an inch.

In T. 45 N., R. 7 E., survey No. 2712, certificate No. 348, surveyed for James Conway or his legal representatives 200 arpents of land, equal to $170\frac{14}{100}$ acres, located by virtue of a New Madrid certificate.

Beg. at the N. W. corner of sec. 16, in T. 45 N., R. 7 E., which is a post in mound, thence east 3 ch. 70 lks. to a post in mound, corner of Martin Coontz's survey; thence north with his line 19 ch. 74 lks. to corner post in mound; thence west 44 ch. 70 lks. to post in mound; thence south 19 ch. 74 lks. to ¼ sec. post in mound in south
459 boundary of sec. 8, in T. 45 N., R. 7 E., and 40 ch. to the S. W. corner of this survey, a post in mound; thence east 41 ch. 48 lks. post in mound in west boundary of sec. 16, T. 45 N., R. 7 E.; thence north 20 ch. 26 lks. to beginning.

23rd June, 1819.

JOS. C. BROWN, *D. S.*

SURVEY OFFICE, ST. LOUIS, *Sept. 4th*, 1822.

I certify that the within is a true copy of the survey on file in this office.

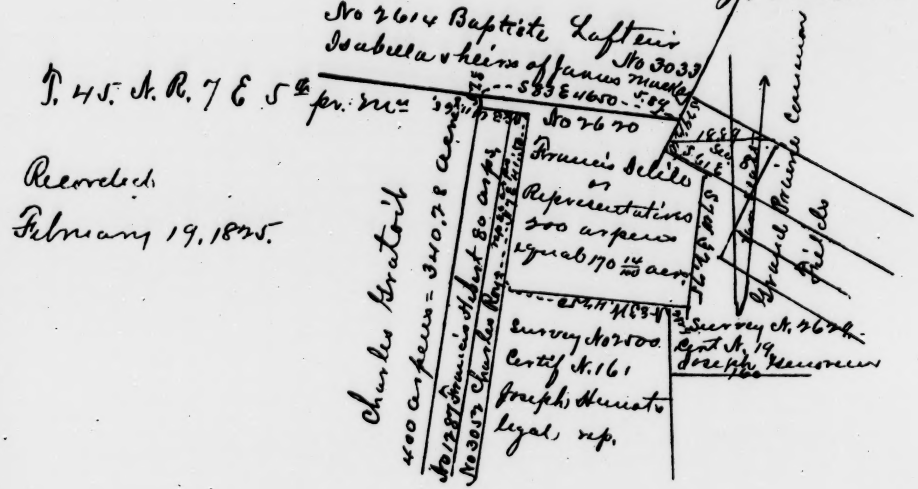
WM. RECTOR.

To Frederick Bates, Esqr., recorder of land titles for the Missouri Territory.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *June* 5, 1876.

I, U. J. Baxter, Commissioner of the General Land Office, do hereby certify that the annexed copy of the special plat and field-notes of the survey of the New Madrid claim of James Conway, designated as survey No. 2712 in T. 45 N. of R. 7 E., Mo., and its return to the recorder of land titles at St. Louis, Missouri, is a true and literal exemplification of the original now on file in the General Land Office.

Vol 114
Hammond et al } p460
vs
Johnston Recr.



T. 45. N. R. 7 E 5th pr. Mer.

Recorded
February 19, 1875.

In testimony whereof I have hereunto subscribed my
[SEAL.] name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

U. J. BAXTER,
Acting Commissioner of General Land Office.

Plaintiffs' counsel next offered in evidence the Delisle sur-
460 vey of the other New Madrid location just north, numbered 2620 and dated July 29th, 1818, locating the Delisle New Madrid location just north of the Hunot.

(Here follows diagram marked p. 460.)

Certificate No. 16, survey No. 2620, surveyed for Francis Delisle or representatives, 200 arpents, equal $170\frac{14}{100}$ acres, located by virtue of a New Madrid certificate: Beginning at the N. E. corner of a survey of 400 arpents confirmed to C. Gratiott, thence S. 83 E. with the southerly boundary of Lafleur's survey 46 chs. 50 lks., set post in the westerly boundary line of the field lands of Grand prairie, 6 chs. 52 lks. northerly of the S. W. corner, from which a cherry 3 in. dia. bears S. 43½ W. 97 lks., and a cherry 5 in. dia. bears S. 8 W. 189 lks.; thence S. 29½ W. 6 chs. 52 lks. to a point inaccessable in a pond; thence S. 61 E. 8 chs. 65 set post in mound in south boundary of the field lands; thence S. 7 W. 32 chs. 75 lks. set post, from which a R. O. 3 in. dia. bears S. 12 E. 20 lks. and a ditto 5 in. dia.
461 bears S. 61½ E. 60 lks.; thence N. 83 W. 42 chains 50 lks. intersected the east boundary of F. Hebert's 80-arpent tract. Set post in mound at 39 chs. 70 lks. on this line intersected the line between sec. 7 & 8 40 chs. 50 lks. north of the corner of section 7, 8, 17, 18; thence N. 7 E. with the east boundary of Hebert's tract 42 chs. 50 lks. to his N. E. corner, a stone; thence N. 83 W. with the north boundary of Hebert's tract 11 chs. 68 lks. intersected Gratiott's 400-arpent tract at Roy's N. W. corner, a stone; thence N. 7 E. with Gratiott east boundary 3 chs. 20 lks. to the beginning. July 29th, 1818.

JOS. C. BROWN, *D. S.*

(Margin.)

SURVEYOR'S OFFICE, ST. LOUIS, *24th of August*, 1847.

The connections of survey No. 2620, with the adjoining public and private surveys are this day laid down on the record.

F. R. CONWAY,
Surveyor General.

I, George Diegel, register of lands for the State of Missouri, do hereby certify the above to be a correct copy of the original United States plat and filed-notes of the survey No. 2620, in the name of Francis Delisle or representatives, as the same appears of record on page 109 of a book entitled "Record Book A, New Madrid Survey," which book is up to this day preserved on file in my office.

In testimony whereof I have hereunto set my hand and affixed

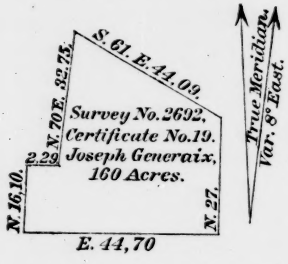
my seal of office, at the city of Jefferson, this 22nd day of June, 1876.

[SEAL.] GEORGE DIEGEL,
Register of Lands.

Plaintiffs' counsel next offered in evidence survey 2692, for the same purpose, in the name of Genereaux, which also bounded
462 the same land, dated the 23rd of June, 1819, four years before the sheriff's deed:

Survey No. 2692. *Certificate No.* 19.

Survey No. 2692.



Surveyed for Joseph Genereux or his legal representatives 160 acres of land, located by virtue of a New Madrid certificate.

Beginning at a post in mound the N. E. corner of Francis Delisle or representatives' survey of 200 arpents, thence S. 61 E. 44 chs. 9 lks. to post in mound, a corner of a survey of 640 acres in the name of Martin Coontz: thence south with his line 27 chains to corner post in mound; thence west 44 chs. 70 lks. to cor. post in mound (from this post due south to 19 chs. 74 lks. to ¼ sec. post in the south boundary of section 8, t'p 45 N., R. 7 E.); from the last-named corner north 16 chs. 10 lks. to post in mound; thence S. 83 E. 2 chs. 29 lks. to a post, from which a R. oak, 3 inch. dia., bears S. 12 E. 20 lks. and a ditto, 5 inch. dia., S. 61½ E. 60 lks.; thence N. 7 32 chs. 75 lks. to the beginning.

23rd June, 1819.

JOS. C. BROWN, *D. S.*

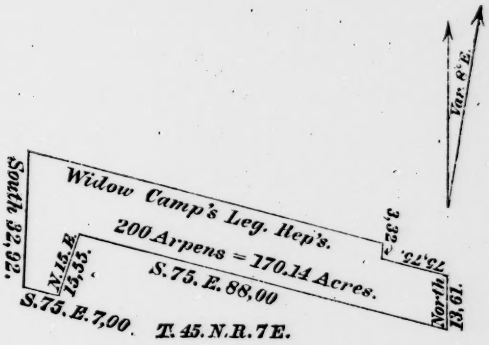
I, George Diegel, register of lands for the State of Missouri, do hereby certify the above to be a correct copy of the original United States plat and field-notes of the survey No. 2692, in the name of Joseph Genereux or his legal representatives, as the same appears of record on page 107 of a book entitled "Record Book A, New Madrid Survey," which book is up to this day preserved on file in my office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed my seal of office, at the city of Jefferson, this 23rd day of June, 1876.

GEORGE DIEGEL,
Register of Lands.

463 Plaintiffs' counsel next offered in evidence survey of the Ann Camp tract, lying immediately east of this Hunot survey, and being a description, by J. C. Brown, of the Ann Camp tract, dated March 8th, 1820. This is to show what surveys were located all around this tract at that time.

Survey No. 903.



Surveyed for Widow Camp's legal representatives 200 arpents of land, equal to 170.14 acres.

Beginning at the S. E. corner on Aguste Chouteau, thence north with the west line of Peltier's survey 13 ch. 61 lks., set a stone, the N. E. corner in said line; thence N. 75 W. 15 ch. 75 lks., set stone for a corner of the tract; thence north 3 ch. 32 lks., set stone, a corner to this tract and S. E. corner of fract'l sect. 16; thence N. 75 W. 86 ch. 25 lks., set stone, the N. W. corner of the tract and S. W. corner of fract'al sect. 16; thence south 32 ch. 92 lks., a stone in Yosty's line; thence S. 75 E. 7.00 ch., a stone, the south bank of creek in Chouteau's line; thence N. 15 E. 15 chs. 55 lks., Chouteau's N. W. corner-stone; thence S. 75 E. 88.00 ch. to the beginning corner. March 20, 1820.

JOS. C. BROWN, *D. S.*

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, James E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of the plat and description of survey No. 903 as the same appears in Book B of record
464 of private surveys now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at the city of Jefferson, this 23rd day of December, 1879.

JAS. E. McHENRY,
Register of Lands.

[SEAL.]

Plaintiffs' counsel next offered in evidence a deed, dated the 22nd of March, 1820, by Alexander McNair to William Stokes, conveying

to William Stokes the Ann Camp survey, to show that Stokes owned the Ann Camp survey in 1823, when this sheriff's deed was made.

Deed.

A. McNair
to
W. Stokes.

OFFICE OF THE RECORDER OF DEEDS, ST. LOUIS, MO.

This indenture made this twenty-second day of March in the year of our Lord one thousand eight hundred and twenty between Alexander McNair and Margaret S. McNair, his wife, of the town of St. Louis in the county of St. Louis and Territory of Missouri of the first part and William Stokes of the same place party of the second part: Whereas the said parties of the first part by their deed bearing date the twenty-fourth day of June in the year one thousand eight hundred and nineteen granted, bargained and sold to the said party of the second part a certain tract or parcel of land containing two hundred arpens more or, less lying east of the Cul-de-Sac fields about three miles of the town of St. Louis in the county of St. Louis and Territory aforesaid being a tract of land confirmed to the
465 heirs of Ann Camp deceased and by the said heirs conveyed to the said Alexander McNair, bounded as follows, that is to say: Beginning at the northwest corner of Auguste Chouteau's mill tract thence by a line running south fifteen west, six chains thirty-four links to a stone, thence north seventy-five, west eight chains seventy-six links to a stone, thence north fifteen east nineteen chains forty-eight links to a stone, thence south seventy-five east one hundred and twenty-seven chains nineteen links to a stone at the end of St. Louis fields, and thence with the lines of the said field, south twenty-five and a half west thirteen chains, thirty-eight links to a stone, thence north seventy-five west one hundred and sixteen chains to the beginning as by said deed duly recorded in the office of the clerk of the circuit court of the county of St. Louis in Book H. page 378 on 24th. June 1819, will more fully and at large appear.

And whereas a part of the tract conveyed by said deed interferes with a certain tract located by William Kinchelve as assignee under a New Madrid certificate for one hundred and sixty acres granted to Eustache Peltier or his legal representatives which location was made previous to the survey of the said tract above described, confirmed to the heirs of the said Ann Camp deceased and conveyed by the said party of the first part to the said party of the second part.

And whereas it is desirable that each of the said claimants should retain their respective portions of land which could be done by the said parties of the first part procuring the survey of the said tract of two hundred arpens to be altered and resurveyed so as not to interfere with the aforesaid location of the said William Kinchelve, which arrangement has been amicably agreed to by
466 all the parties concerned in said several tracts of land, and the said tract of land of two hundred arpens above described

as confirmed to the heirs of Ann Camp deceased having been resurveyed under such arrangement by which resurvey the boundaries are as hereinafter described and conveyed to the said party of the second part.

Now therefore, this indenture witnesseth: That the said parties of the first part for and in consideration of the sum of three thousand five hundred and fifty dollars to them in hand paid by the said party of the second — at or before the unsealing and delivery of the said deed above described bearing date the 24th. June 1819; and also in consideration of the above premises, and also in consideration of the sum of one dollar the receipt of which are hereby confessed and acknowledged have granted, bargained, sold, released, aliened and confirmed, and by these presents do grant, bargain, sell, release, alien and confirm unto the said party of the second part his heirs and assigns forever all that certain tract or parcel of land containing two hundred arpens lying east of the Cul-de-Sac fields about three miles from the town of St. Louis aforesaid being a tract of land confirmed to the heirs of Ann Camp deceased and by the said heirs conveyed to the said Alexander McNair, bounded as follows that is to say: Beginning at a stone in Aguste Chouteau's line at the southwest corner of Kinchelve location thence north thirteen chains sixty-one links to a stone thence north seventy-five west, fifteen chains seventy-five links to a stone thence north three chains thirty-two links to a stone being the southeast corner of the sixteen section: thence north seventy-five west eighty-six chains twenty-five links to a stone being the southwest corner of said fractional sixteenth section, thence south
467 thirty-two chains ninety two links to a stone in Yosty line thence south seventy-five east seven chains to a stone on the south bank of creek in Chouteau's line thence north fifteen east, fifteen chains fifty-five links to a stone being Chouteau's northwest corner thence south seventy-five east eighty-eight chains to the place of beginning. To have and to hold all and singular the said premises with the appurt-ances and hereditaments thereunto belonging unto the said party of the second part his heirs and assigns forever and the said parties of the first part for themselves their heirs executors and administrators do covenant, grant, promise and agree to and with the said party of the second part his heirs and assigns that they the said parties of *of* the first part will use every possible and reasonable exertions and endeavors to procure the patent for the said land last above described and conveyed to be issued by the United States without delay. And further that they the said parties of the first part their heirs and all and every other person or persons and his and their heirs having or lawfully claiming any estate, right, title or interest of in or to the said premises by these presents above released or confirmed or any part thereof shall and will from time to time and at all times hereafter upon the reasonable request of the said party of the second part his heirs and assigns and at the proper costs and charges in the law of the said parties of the first part make, do, seal and execute or cause or procure to be made, done sealed and executed all and every such fur-

ther and lawful and reasonable act, thing and things, device and devices, conveyance and conveyances, assurance and assurances in the law whatsoever for the further, better and more perfect granting, conveying releasing, confirming and assuring all and
468 singular the said premises with the appurt-ances and every part and parcel thereof to the said William Stokes his heirs and assigns or to such person as he or they shall direct or appoint as by the said William Stokes his heirs and assigns or his or their counsel learned in the law shall be reasonably advised or required and that they the said parties of the first part their heirs, executors and administrators will warrant and forever defend all and singular the premises above conveyed and confirmed unto the said party of the second part his heirs and assigns forever against themselves and their heirs and against every other person or persons whomsoever lawfully claiming or to claim the whole or any part of the same.

In witness whereof the said parties of the first part have hereunto set their hands and affixed their seals the day and year first above written.

A. McNAIR [L. S]
MARGAT. S. McNAIR [L. S.]

In presence of:

3rd. p 7th. line "will use" interlined before signature
A. GAMBLE.

TERRITORY OF MISSOURI, } ss:
County of St. Louis, }

This day personally appeared before me, the clerk of the circuit court for the county of St. Louis, the above-named Alexander McNair and Margaret S. McNair, his wife, and acknowledged the above and foregoing deed or instrument in writing to be their acts and deeds, hands and seals, for the purposes therein mentioned; and the said Margaret, being by me made acquainted with the contents of said instrument and examined separately and apart from
469 her said husband, acknowledged that she executed the same freely and voluntarily and without the compulsion or undue influence of her said husband.

[SEAL.] Given under my hand and seal of office, at St. Louis, this tw-nty-fourth day of March, eighteen hundred and twenty.

ARCHIBALD GAMBLE, *Clerk.*

Recorded this twenty-fo-rth day of March, 1820.

ARCHIBALD GAMBLE, *Clerk.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

OFFICE OF RECORDER OF DEEDS.

I, the undersigned, recorder of deeds, certify that the foregoing is a true copy of an instrument in writing executed by Alexander McNair and wife, together with the acknowledgment and date of filing and recording thereof, as fully as the same remains of record in my office, in Book I, page 118.

[SEAL.] Witness my hand and official seal this fourteenth day of February, 1879.

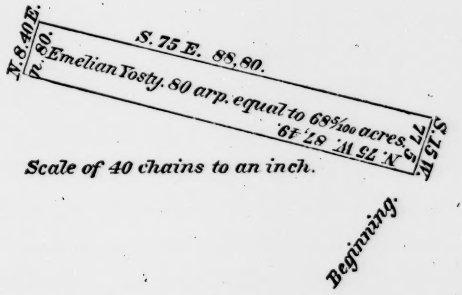
C. W. IRWIN, *Recorder.*

Plaintiffs' counsel next offered in evidence survey of the Emilien Yosty tract, lying immediately on the south side of the common fields, dated April, 1818. Yosty conveyed to Labadie and Phillipson and Labadie conveyed his interest to Phillipson.

Survey No. 1332.

Township No. 45 north, range No. 7 east, of the 5th principal meridian.

No. 1332.



Surveyed for Emilien Yosty, claiming in his own right, 80 arpen-, equal to $68\frac{5}{100}$ acres.

Beginning at a stone, his S. E. corner, on the west boundary
470 of A. Chouteau's mill tract, 23 chs. 30 lks. southward of his N. W. corner, thence N. 75 W. 87 chs. 94 lks., intersected Charlse Gratiott's line and set post in mound 10 ch. 27 lks. southward of his N. E. corner-stone; thence with Gratiott's line N. 8 40 E. 7 ch. 80 lks., set post 2 ch. 47 lks. S. of Gratiott's corner; from this post a B. jack 3 in. dia. bears N. 55 E. 93 lks.; thence S. 75 E. 88 ch. 80 lks., set stone in Chouteau's line for the N. E. corner just south of the branch and 15 ch. 55 lks. southward of Chouteau's corner; thence S. 15 W. with Chouteau's line 7 ch. 75 lks. to the beginning.

Surveyed April, 1818, by Jos. C. Brown, D. S.

STATE OF MISSOURI,
OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of the plat and description of survey No. 1332 as the same appears of record in Book C of record of private surveys, now on file in this office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said office, at the city of Jefferson, this 28th day of October, 1879.

JAS. E. McHENRY,
Register of Lands.

Deed.

S. Labadie & Wife
to
J. Philipson.

Translation.

Know all men who shall see these presents, that I Silvestre Labadie and Victoire my wife, of the town and county of St. Louis, Territory of Missouri for the price and in consideration of the sum of one thousand dollars which have been well and duly paid us by Joseph Philipson of said place from which we hold him re-
471 leased and discharged. We have this day sold, ceded, relinquish'd, surrendered, abandoned and transferred, as in fact and by these presents we do sell, cede, relinquish, surrender, abandon and transfer to said Joseph Philipson his heirs or legal representatives all the rights, titles, claims, actions and property which we have or may have to the following property to wit: a piece of land of two arpents in front by forty arpents in depth, situated at the place commonly called "Cul-de-Sac" bounded south by the land formerly belonging to Jacques Noise, and north by that property formerly belonging to La Rochille being the same piece of land which I Silvestre Labadie acquired with the said Joseph Philipson of Emilien Yosty, and Pheatiste his wife by deed of the seventeenth of June 1817 as it appears by the records of said deed in the recorder's office of this county of St. Louis in Book E pages five hundred and forty and following. Also another piece of land situated at said "Cul-de-Sac" containing also two arpents by forty bounded east and west by vacant lands north by that of Widow Camps and south by that hereinbefore acquired of Emilien Yosty, which land I the aforesaid Labadie acquired with the said Joseph Philipson of Gabriel Lachance and Marie Annie his wife, by sale of the twenty-seventh of last August, as it appears by the said sale recorded in the recorder's office of the county of St. Louis in Book F. page sixty-seven for the said Joseph Philipson, his heirs or legal representatives, to hold, manage and dispose of the aforesaid two pieces of land with all the rights and privileges which belong and may belong thereto as of property to him belonging in his own right, now and forever. And I, the aforesaid Philipson knowing the title of the aforesaid two lands, as also the lease made me
472 and Silvestre Labadie to Nero Lyons to accept this present sale at all risk and hazard without any recourse whatever on my part or that of my heirs or legal representatives, against the said Silvestre Labadie even if the titles of said lands should not be sufficient and valid.

In testimony whereof, we have signed, sealed and delivered these

presents at St. Louis the 9th. of June in the year of our Lord eighteen hundred and seventeen (1817)

SILVESTRE LABADIE, [SEAL]
VICTOIRE LABADIE, [SEAL]
JOSEPH PHILIPSON. [SEAL]

Sigd., sealed and delivered in presence of
D. DELANNEY.
TH. PAPIN.

MISSOURI TERRITORY, *County of St. Louis,* } *sct:*

Be it remembered that on the day and date of the within instrument in writing, before me, Mary Philip Le Duc, clerk of the circuit court within and for the county of St. Louis, in the Territory of Missouri, personally came and appeared the within-named Sylvestre Labadie and Victoire, his wife, and Joseph Philipson, and acknowledged the said instrument in writing to be theirs and each of their acts and deeds, hands and seals, for the purpose therein contained. The said Victoire, wife of said Silvestre, being first separately and apart examined from her said husband and by me made acquainted with the contents of the same, declares that she executed it freely, voluntarily, and of her own free will and accord, without fear, restraint, constraint, or undue influence of her said husband.

In testimony whereof I have hereunto set my
473 [SEAL.] hand and seal of office, at my office, in St. Louis, day and date above said.

M. P. LE DUC, *Clerk.*

Recorded this ninth day of June, 1817.

A. S. McGIRK, *D. Cl'k, for*
M. P. LE DUC, *Clerk.*

STATE OF MISSOURI, *City of St. Louis,* } *ss:*

I, the undersigned, recorder of deeds, certify that the foregoing is a true copy of the translation of an instrument in writing executed by Silvestre Labadie and wife to Joseph Philypson, together with the acknowledgment and date of recording thereof, as fully as the same appears of record in my office in Book F, page 290.

Witness my hand and official seal this 24th day of October, 1882.

[SEAL.] C. W. IRWIN, *Recorder.*

Deed.

(Book E, page 540.)

E. Yosty & Wife
to
J. Philipson & S. Labadie.

Know all men by these presents that we Emelien Yosty and Theatis his wife of the town and county of St. Louis in the Terri-

tory of Missouri, for and in consideration of four hundred dollars lawful money of the United States to us in hand paid by Joseph Philipson and Silvestre Labadie of the same place, the receipt whereof is hereby acknowledged, have given, granted, bargained and sold and hereby do give, grant, bargain and sell unto the said Joseph Philipson and Silvestre Labadie as tenants in common and not as joint tenants and to their respective heirs and assigns forever, a certain piece or parcel of ground situate in the county aforesaid near the town of St. Louis commonly called "Cul-de-Sac" and bounded as follows, to wit: Formerly on the north by Jacques
474 Noise dit Labbe and south by La Rochelle and containing two arpents in front by forty arpens in depth, it being the same tract, piece or parcel of land which the said Emilien Yosty purchased — Louis Honare by deed bearing date the first day of May in the year one thousand seven hundred and eighty-nine and on file in the office of the recorder of the county of St. Louis aforesaid. To have and to hold the *d*aid granted and bargained premises with all and singular the appurtenances to the same belonging unto them the said Joseph Philipson and Silvestre Labadie as tenants in common and not as joint tenants and to their respective heirs and assigns forever. And the said Joseph Philipson and Silvestre Labadie being well acquainted with the title to the aforesaid premises agree and it is expressly understood between the parties to these presents that the said Joseph and Silvestre do take the said premises at their own risk and hazard without any recourse to the said grantors, their heirs, executors, administrators or assigns.

In testimony whereof we have hereunto set our hand and affixed our seals at Saint Louis this seventeenth day of June in the year of our Lord one thousand eight hundred and sixteen and of the American Independence the fortieth.

EMILIEN YOSTY [SEAL]
THEOTISTE X. YOSTY. [SEAL]

Signed, sealed and delivered in presence of
EXPEDIEN V. BOUIS
M. P. LE DUC.

MISSOURI TERRITORY, }
County of St. Louis, } *ss:*

Before me, the undersigned, clerk of the circuit court within and for the county of St. Louis, Missouri Territory, personally came — appeared the within-named Emilien Yosty, Theotiste, his
475 wife, and acknowledged the within instrument in writing to be their and each of their acts and deeds, hands and seals, for the purposes therein contained. The said Theotiste, wife of said Emilien, being first separately and apart examined from her said husband and by me made acquainted with the contents of the within instrument in writing, declares that she executed the same freely and voluntarily and of her own free will and accord, without fear, restraint, constraint, or undue influence of her said husband,

and that they and each of them signed, sealed, and delivered for the purposes aforesaid.

Given under my hand and seal of office, in St. Louis, this [SEAL.] twenty-second day of June, in the year of our Lord one thousand and sixteen.

M. P. LE DUC, *Clk.*

Recorded this twenty-second day of June, 1816.

M. P. LE DUC, *Clk.*

STATE OF MISSOURI, } ss:
County of St. Louis, }

I, the undersigned, recorder of deeds for said county, certify the foregoing to be a true copy of an instrument in writing executed by Emilien Yosty and wife, together with the acknowledgment thereof, as the same remains on record in my office in Book "E," page 540.

Witness my hand and official seal this 8th day of January, 1875.

[SEAL.] D. H. MACADAM, *Recorder.*

And that was all done before the last deed, June 9th, 1817, showing that the tract was entirely in Phillipson in 1817.

Mr. HENDERSON: What is the object of that?

Mr. JEWETT: To show that Phillipson owned land on that south side of the Hunot claim at the time of the sheriff's deed.

476 Plaintiffs' counsel next offered in evidence the deed of Roy, the owner of the strips on the west side of Gratiot, and Gratiot conveyed to Cabanne. That was done as early as the 17th of August, 1816, so that Cabanne owned the west side in 1824.

Deed of Chas. Roy to Chas. Gratiot.

OFFICE OF THE RECORDER OF DEEDS, ST. LOUIS, MO.

Translation.

In the presence of the undersigned witness personally appeared Charles Roy and Suzanne Dodie his wife who acknowledged to have sold, ceded, relinquished and transferred now and forever to Charles Gratiot, for him his heirs and legal representatives to hold as of property to him belonging, a land of two arpents in front by forty in depth situate on the River de Peres, adjoining on one side the land of Francois Herbert and on the other the vacant lands as it appears by his concession dated the 25th. of March in the year 1780 to him granted *ny* Don Fernando de Leyba, the lieut. governor for his majesty the king of Spain, which said land the said Charles Roy and Suzanne his wife, acknowledged by these presents to have disseized themselves in their name and those of their heirs or legal representatives in favor of said Charles Gratiot for the sum of eighty dollars, which they acknowledged to have received cash in hand in consideration of which, we warrant him against all troubles, debts,

mortgages or any other incumbrances whatever and hold him released therefrom, now and forever renouncing &c. &c. Made and executed at Portage des Sioux, county of St. Charles where after the reading hereof in presence of the assisting witnesses, Suzanne wife Charles Roy declared to not know how to sign and made her
477 usual mark on the 17th. of August 1816.

CHARLES ROY, [SEAL]
SUZANNE DODIER. [SEAL]

Witnesses,
FRANCOIS LESIEUR.
LAGOTERIE.

TERRITORY OF MISSOURI, }
County of St. Charles. }

Be it know- that on this day, in the year of our Lord 1816, before me, Francois Lesciur, one of the justices of the peace for the town and county aforesaid, personally appeared the undersigned Charles Roy and Suzanne Dodier, his wife, who acknowledged the foregoing instrument to be their act, sale, signature, and seal, and that each of them have signed, sealed, and delivered the said instrument to said Charles Gratiot for the uses and purposes therein contained. The said Suzanne Dodie, wife of Charles Roy, having been first examined apart from her husband, and I have read to her the contents of the present sale, she has declared that she had freely and voluntarily signed the same without constraint or compulsion from her said husband.

In testimony whereof I have signed these presents and affixed my seal thereto the day as aforesaid.

F. LESIEUR. [SEAL.]

Deed of Chas. Gratiot to J. P. Cabanne.

Know all men by these presents, that I Charles Gratiot and Victoire my wife of the town and county of St. Louis in the Territory of Missouri for and in consideration of the sum of eighty dollars to us at and before the unsealing and delivery of these presents well and truly paid by John P. Cabanne, the receipt whereof, we do hereby acknowledge, have remised, released and quitclaimed and hereby do release, remise, convey and quitclaim unto him the said John P. Cabanne his heirs and assigns forever, all the right, title,
478 claim, interest, property and estate of in and to the tract or parcel of land mentioned in the within deed of conveyance made to me the said Charles Gratiot by Charles Roy and Suzanne his wife. To have and to hold the said remised, released and quitclaimed premises together with all and singular the privileges and appurtenances to the same belonging or in anywise appertaining unto him the said John P. Cabanne his heirs and assigns and to his and their proper and only use forever.

In testimony whereof I the said Charles Gratiot and Victoire my

wife have herewith set our hands and seals this twenty-fourth day of October one thousand eight hundred and sixteen.

CH. GRATIOT, [SEAL]
VICTOIRE GRATIOT [SEAL]

Signed, sealed and delivered in presence of—
ISABELLE DE MUN,
M. P. LE DUC.

MISSOURI TERRITORY, } *sct:*
County of St. Louis, }

Before me, Mary Philip Le Duc, clerk of the circuit court within and for the county of St. Louis, in the Territory of Missouri, personally came and appeared the within-named Charles Gratiot and Victoire, his wife, and acknowledged the within instrument in writing to be their and each of their acts and deeds, hands and seals, for the purposes therein contained. The said Victoire, wife of said Charles, being first separately and apart examined from her said husband, and by me next made acquainted with the contents of the same, declares that she executed it freely, voluntarily, and of her own free will and accord, without fear, restraint, constraint, or undue influence of her said husband.

479 [SEAL.] In testimony whereof I have hereunto set my hand and seal of office, at my office, in St. Louis, on this eighteenth day of March, in the year of our Lord one thousand eight hundred and seventeen.

M. P. LE DUC, *Clk.*

Recorded this eighteenth day of March, 1817.

M. P. LE DUC, *Clk.*

STATE OF MISSOURI, } *ss:*
City of St. Louis. }

OFFICE OF RECORDER OF DEEDS.

I, the undersigned, recorder of deeds, certify that the foregoing is a true copy of an instrument in writing executed by Charles Gratiot and wife, and also the translation of instrument executed by Charles Roy and wife, together with the acknowledgments and date of recording thereof, as fully as the same remains of record in my office in Book F, page 206, &c.

Witness my hand and official seal 29th day of May, 1879.

[SEAL.] C. W. IRWIN, *Recorder.*

Plaintiffs' counsel next offered in evidence specific instructions to William H. Cozens when he surveyed this land, dated May 9th, 1846, and more particularly the following words: "Sir: You are hereby appointed and authorized to survey and connect with the adjacent surveys the confirmed private land claims below specified, or so many of them as can be located, without interfering with field lots already surveyed in the names of other persons. Said claims are all situated on the Grand Prairie common field in the vicinity of

St. Louis." Among those claims there is not one of those which are named and corrected by Mr. Cozens and that appear on the map put in yesterday between the Bazette tract and the Louis Lacroix tract. None of these are mentioned in this list of the claims
480 which Cozens was authorized to survey, and all the authority he had was in these words: "It will be necessary to run the end lines of the intermediate unconfirmed claims so as to keep up the connection between those that are confirmed and for the purposes of putting the latter in their relative position."

Instructions to W. H. Cozens, May 9, '46.

SURVEYOR'S OFFICE, SAINT LOUIS, *May 9th*, 1846.

SIR: You are hereby appointed and authorized to survey and connect with the adjacent surveys the confirmed private land claims below specified, or so many of them as can be located without interfering with field lots already surveyed in the names of other persons. The said claims are all situated in the Grande Prairie common field in the vicinity of St. Louis and in T. 45 N., R. 7 E., 5th p'l mr., viz:

1st.	Baptiste Riviere dit Bacaue	1	by	40	arpents.
2nd.	Pierre Barribeau	1½	"	40	"
3rd.	Francis Bissonette	½	"	40	"
4th.	Auguste Chouteau, under Widow Bissonette	2	"	40	"
5th.	Samuel Bridge (same as John B. Ortez)	2	"	40	"
6th.	Auguste Conde	2	"	40	"
7th.	Francois Faustin dit Parent	1	"	40	"
8th.	Jeannette, free negro woman	1	"	40	"
9th.	Pierre Lacroix	2	"	40	"
10th.	Louis Laroche	1	"	40	"
11th.	Jacon Lasabloniere	1½	"	40	"
12th.	Frances Mareschal	½	"	40	"
13th.	Antoine Peynar	1	"	40	"
14th.	Claude Timon	1½	"	40	"
	15th. Benito Vasquez	1	"	40	"
481	16th. Louis Lacroix	1	by	40	"
	17th. Antoine Roy	1	"	40	"
18th.	Jean Baptiste Hervieux	2	"	40	"
19th.	William or Guillame Bizet	1	"	40	"

I herewith enclose the following-described papers, lettered from A to M, viz:

A. Your appointment as deputy surveyor.

B. A copy of the printed general instructions to deputy surveyor for surveying private claims.

C. A diagram of the Grande Prairie common field so far as surveyed, with the adjacent surveys to the southward, eastward, and westward thereof, with descriptions on said diagram of all the corners which you may have to run from or close on.

D. A transcript from the files and records of this office and that

of the recorder of land titles of the confirmed and unconfirmed claims, beginning with that of Francis Dunnegan dit Beaurosier on the N. E (already surveyed) and extending southwesterly so far as as to include the unconfirmed claims of Barsoloux. These claims, it is believed, were originally connected with each other. There is, however, nothing of record to show the connection between Jacques and Antoine Marechal, Dehetze and Moreau, and Corneau & Berger.

E. A transcript from the files and records of this office and those of the recorder of land titles of Grande Prairie claims which cannot be located without further proof as to their localities.

F. A diagram of confirmed and unconfirmed claims in the Grande prairie, of which that of Ignace Laroche is the most northern and Barsaloux's is the most southern. This is copied from a diagram left at this office by L. A. Benoist, and is believed to have
482 been obtained from Colonel Paul's office.

G. An abstract of Duralde's notes of his surveys of the claims of Alexis Picart and Joseph Mainville dit Dechenes, which accounts for what is commonly called the "offset" in the Grande Prairie fields.

H. The depositions of Baptiste Riviere and René Dodier in relation to the localities of the several Grande Prairie and Cul-de-Sac field lots, lying southwesterly of the said Riviere claim in the Grande prairie.

I. A list of unconfirmed field lots in the Grande prairie.

K. A transcript from the recorder's office of the proceedings of the last board of commissioners in the case of Guillaume Bizet, claiming 1 by 40 arpents, which was confirmed by the act of Congress of the 4th of July, 1836, under decision No. 286.

L. A copy of so much of the acts of Congress of the 13th of June, 1812, and 26th May, 1824, as may be of use to you.

M. The deposition of Rene Paul as to the locality of the claim of Baptiste dit Bacane.

In the execution of the surveys of the claims before mentioned you will in all cases be governed by the general instructions marked B, except only where they may conflict with the following special instructions, viz:

1st. Trace one or more of the lines of the Grande Prairie field lots (already run) which can be properly identified, and at the variation you find your compass to follow such line or lines all your surveys are to be made.

2d. All the long or side lines of the lots are to be parallel to the southwest boundary of survey No. 3285 in the name of Dunnegan, and the end lines are to be continuations of the S. eastern and N. western boundaries of surveys No. 1296, 1461, 3303, 3304,
483 1561, 1583, and 3285, except you are obliged to vary a little, so as to have exactly 40 arpents between said end lines, and also except you find that another offset was made to the northwestward in the original surveys, in which case you will report to this office and give your reasons for supposing such to be the fact.

3rd. It will be necessary to run the end lines of the intermediate unconfirmed claims, so as to keep up the connections between those

that are confirmed, and for the purposes of putting the latter in their relative positions.

4th. The papers D & E show everything (as is believed) on the subject of the aforesaid claims that is to be found in this office or in that of the recorder of land titles, and as the information which they afford is by no means satisfactory in respect to some of the claims it is expected that the persons interested will afford you such additional proof as to the localities of their claims as it may be in their power to furnish.

5th. You are to respect only such evidence produced by the claimants as may be in writing and which ought to be filed in this office for future reference.

But in the case of deeds being presented, which, of course, will not be given up to you, you will state in your field book the substance of the same, by which you may be governed. Give the names of the parties, dates, and the books and pages where they are recorded.

6th. In case you should find it impossible to keep up a regular connection of the several tracts for want of proper data, and any one or more of the claimants should be able to prove the precise situation of his or their original improvements, you can survey such tract or tracts so as to include the improvements. The lines, however, are to be run as mentioned under the 2d head.

484 7th. You will observe that the width of several of the tracts on the list of unconfirmed claims (marked I) is not given. You will supply this deficiency, if possible, by the depositions of living witnesses or such other testimony as may be indisputable.

8th. Such claims on the list marked D as you may find to have been already surveyed by Jos. C. Brown under other names you will have nothing to do with, nor are you to survey any claims where their localities are doubtful.

9th. As the lands are very valuable on account of their proximity to the city of St. Louis, your surveys may give rise to a good deal of litigation unless the greatest possible care be taken to put each claim in its proper place. It is therefore hoped that you will not suffer yourself to be biased by any one, but to act in your capacity as deputy surveyor without fear, favor, or affection.

10th. Instead of noting your surveys in the order in which the work is done on the ground, as prescribed in the general instructions, you are at liberty first to make rough minutes on the ground, from which make out a fair set of notes in a book to be kept for that purpose, so that the notes of each survey may be complete without having to refer to the notes of another survey.

11th. All papers herewith furnished you (except your commission), together with such written evidence in relation to the aforesaid claims as may come into your possession, are to be returned, with your field-notes of surveys, to this office.

Three months from the date hereof are allowed for making your returns to this office, when, if your surveys shall be approved by the surveyor of public lands in the States of Illinois & Missouri, you will

be paid on account of the United States at the rate of six dol-
485 lars per mile for the lines of the surveys, as well as their connections, under the appropriation made for the surveys of towns & villages in Missouri, except in the case of Guillame Bizet, for which you will be paid, under the appropriation for the survey of private claims confirmed by the act of 4th July, 1836, at the rate of five dollars per mile for the lines of the survey and connections.

I am, very respectfully, sir, your obedient servant,

F. R. CONWAY,
Surv. Gen'l.

William H. Cozens, Esqr., deputy surveyor, present.

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct transcript of a copy of a letter from F. R. Conway, surveyor general, to William H. Cozens, deputy surveyor (the original not being on file in this office), as the same appears of record in Letter Book L, now on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at the city of Jefferson, this 26th day of May, 1879.

[SEAL.] JAS. E. McHENRY,
Register of Lands.

Plaintiffs' counsel next offered in evidence the instructions of Cozens, dated the 22nd of February, 1855, which require him to bring back those common field lots and locate them as they are now located:

Instructions to W. H. Cozens, Feb. 22, '55.

Office of the surveyor general.

ST. LOUIS, 22*d February*, 1855.

SIR: You are hereby appointed to execute the following
486 field work in the southern part of the Grande Prairie common field of St. Louis: 1st, to prolong the western line of the Grande Prairie from the southwest corner of survey No. 1276 (lot No. 1 of your location) southward to the south boundary of lot No. 14 of Guillame Bizet or his legal representatives, so as to make it a single straight line from the northwest corner of survey No. 1296, for Mainville dit Dechenes.

The east and west boundaries of surveys Nos. 1296, 1461, 3303, & 3304 in 1838, by Joseph C. Brown, bear 29° 30′ E. The east and west boundaries of surveys Nos. 1561, 1583, & 3285, subsequently executed by said Brown and L. M. Eiler, is N. 28° 45′ E. The discrepancy between those bearings may have arisen from a slight difference in the variation, or the ordinary causes producing such discrepancies, when surveys are made at different times. Your whole eastern line bears N. 28° 45′ E., and so does your western line, except the western boundary of survey No. 1276, which runs it 29° 5′

E. Should this latter course be prolonged south the west boundary of the Grande prairie from Mainville's to Bizette's lot would not be a straight line, but two lines, the angle to which is the corner common to surveys Nos. 1276 & 3285. This is to be avoided.

2d. From the new western line run and fixed as aforesaid extended eastward lots No. 12, for Rondeau; No. 13, for Bacanne, and No. 14, for Guillame Bizet, so as to make their eastern boundaries a prolongation of the eastern line of the lots north thereof.

3d. Locate on lots No. 12, for Rondeau, and No. 13, for Becanne, the lot of two arpents confirmed to Vincent Bouis' representatives by the acts of 13th June and 26th May, 1824.

4th. The side lines of many tracts are crossed by the small creeks made by the several springs of the locality. The distance of
487 such intersections from a given corner not being stated in your former notes, it is necessary to repair the omission, and if there are any of the natural and permanent objects connected with your surveys, the locality of which has not heretofore been fixed in relation to the lines thereof, you will fix that locality by actual measurement. For instance, supposing that you are describing the south boundary of Laroche, state, "at — chains, a point from which the remains of Marie house bears — at — chains across a branch running —;" but this instruction, I repeat, is only to be carried out where the connections have not already been made.

5th. From the Marie spring run a line N. 28° 45′ E. to the southern boundary of lot No. 14, for Bizet, and from the point where it intersects it run to the S. W. corner of that lot for connection.

6th. It is desirable that your measurement be taken in chains and links, and not in feet and inches.

7th. Connect all your intersections with the lines of established surveys to the nearest corner of said surveys where your new operations shall require it.

It is expected that you will attend to this work without delay.

Very respectfully, your ob't servant,

——— ———,
Surveyor General.

To Wm. H. Cozens, Esqr., deputy surveyor, St. Louis, Mo.

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Mis-
488 souri, certify the foregoing to be a correct transcript of a copy of a letter to Wm. H. Cozens, deputy surveyor, as the same appears of record in Letter Book "A" No. 1, now on file in this office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of said office, at the city of Jefferson, this 28th day of May, 1879.

JAS. E. McHENRY,
Register of Lands.

Plaintiffs' counsel next offered survey 1813, for Bouis—it is a Government survey—to show how it runs across the tracts; survey of 1855.

Survey No. 1813.

Plat and description of a survey of a tract of sixty-eight acres and eighty-seven hundredth- of an acre of land situated in the Grand Pra-rie common fields of St Louis, in township 45 north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, executed by Wm. H. Cozens, deputy surveyor, in the years 1850 & 1855, under instructions from the surveyor general of Illinois and Missouri, dated the 9th May, 1846, & 22d February, 1855, this being the lot of two arpents front by forty arpents deep confirmed to Vincent Bouis' legal representatives under Pierre Chouteau by the act of Congress of the 13th June, 1812, the extent and boundaries whereof were proven before Theodore Hunt, United States recorder of land titles for Missouri, on the 1st of June, 1825, under the provisions of the 1st section of the act of Congress approved on the 26 of May, 1824, entitled "An act supplementary to an act passed on the 13 day of June, 1812, entitled 'An act making further provisions for settling the claims to land in the Territory of Missouri'" (see Hunt's Minutes No. 2, p. 2, and Hunt's list, item No. 441.):

(Here follows diagram marked p. 489.)

490 *Description.*

Beginning at a stone twelve inches long, twelve inches wide, and four inches thick set in the eastern boundary of the Grande Prairie common field for the northeast corner of this survey and the southeast corner of the lot of Louis Laroche, survey number one thousand six hundred and sixty-five, from which a sassafras eight inches in diameter bears north eighty-one degrees and twenty minutes west, distant fifty-one links, and a black oak eleven inches in diameter bears north eleven degrees and fifteen minutes west, distant sixty-six and a half links;

Thence south sixty-one degrees west with the line between this and the Laroche survey, at four chains and fifty-one links the eastern edge of Grand avenue; at five chains and seventy-one links, intersecting the northern line of the tract of Widow Camp's legal representatives, survey number nine hundred and three, at a stone fifteen inches long, eight and a half inches wide, and three inches thick, from which a red oak five inches in diameter bears south thirty degrees and twenty-five minutes west, distant seven links, and a red oak five inches in diameter bears north seventy-four degrees and thirty minutes west, distant twenty-five links; at thirty-two chains and sixty-one links a rail fence; at thirty-nine chains and ninety-five links a board fence; at forty-five chains and fifty-one links a branch five links wide runs southwestward; at fifty-five chains and eighty-six links a point fifteen links northward of the remains of an old chimney of Alexis Marie's house; at sixty-two chains and forty-one links, intersecting the west boundary of sect. 16, township forty-five north, range seven east, of the fifth principal meridian, and a line of the tract of James Conway, survey numbered two thousand seven hundred and twelve, at a stone; at seventy-three

chains and ninety-seven links a point in the middle of the
491 bed of a branch twenty links wide, runs southward; at seventy-four chains and forty-seven links a spring about fifty links north of the line; at seventy-five chains and seventy-seven links a point about sixty links southward of the foundation or remains of an old chimney said to be of Laroche's or Andre Vicent Bouis' house; at seventy-nine chains and twenty-six links a rail fence; at eighty-five chains and forty-one links a board fence bearing north thirty degrees east and south thirty degrees west; at ninety-five chains and seventy links a point in the west side of a frame house owned by David Desislets, seven links northward from the southwest corner thereof; at one hundred and nine chains and seventy links, intersecting the north & south line between the tract of James Conway and that of Joseph Hunot, survey number two thousand five hundred, at a stone fourteen and a half inches long, six and a half inches wide, & six inches thick; one hundred seventeen and a half inches long, nine and a half inches wide and five inches thick, the northwest corner of this survey and southwest corner of the Laroche survey;

Thence south twenty-nine degrees and five minutes west with the western boundary of this survey and of the Grand Prairie field, at two chains ninety-one and two-thirds links a stone thirteen and a half inches long, nine inches wide, and five inches thick, the northwest corner of the lot of Baptiste Riviere dit Baccanne's legal representatives, survey number one thousand eight hundred and fourteen, five chains eighty-three and one-third links to a stone thirty-two inches long, fifteen and a half inches wide, & six and three-quarter-inches thick, the southwest corner of this survey & the northwest corner of the lot — Guillame Bizet or his legal representatives, survey number three thousand three hundred and forty;

Thence south sixty-one degrees east with the line between
492 this survey and that of Bizet or his representatives, at eleven chains and sixty-five links, intersecting the north & south line between the Hunot and Conway tracts at a stone six chains and sixty-nine links southward from the stone at the intersection of said line with the north boundary of this survey; at nineteen chains and seventeen links a fence; at twenty-two chains and thirty-three links a large stone on the summit of a ridge; at thirty-two chains and forty-eight links a stone forty-two links south thirty degrees west from the southeast corner of an enclosure; at thirty-three chains and thirty-four links a point in a line with the west end of Fenn's cow stable, twenty-four links northward from its northwest corner; at thirty-three chains and ninety-six links, intersecting the north side of the stable; at thirty-six chains and seventy-five links, intersecting the south side of the stable seventy-two links westward from its southeast corner; at thirty-seven chains and sixty-five links a board fence at a point thirty-three links southward from the southeast corner of said stable; at forty-five chains and forty-five links a branch runs southwestward; at fifty-eight chains and seventy-five links, intersecting the west

boundary line of sec. sixteen at a stone six chains and sixty-six links southward from the stone at the intersection of said section line with the north boundary of this survey and two chains and ninety-three links northward from the southeast corner of the Conway tract; at sixty-eight chains and seventy links a branch five links wide runs southwestward; at seventy-seven chains and ninety-three links a spring branch runs southeastward; at seventy-nine chains and six links a board fence; at eighty-six chains and ninety-six links a board fence; at eighty-eight chains and thirty-five links, intersecting the northern boundary of the Widow Camp tract at a stone set on the south side of a dead oak twenty-eight inches long, six inches wide, and
493 three inches thick, from which a black oak four inches in diameter bears north sixty one degrees west, distant thirty-two links, and a black oak nine inches in diameter bears south six degrees and thirty minutes west, distant twelve links, and the stone at the intersection of said northern boundary of the Camp tract with the northern boundary of this survey bears south seventy-five degrees and twenty-five minutes east, distant twenty-three chains and forty-eight links; at one hundred and fourteen chains the fence on the west side of Grande avenue; at one hundred fifteen chains and twenty-five links the fence on the east side of Grande avenue, one hundred eighteen chains and eighteen links to a stone seventeen inches long, ten and a half inches wide, and five inches thick, the southeast corner of this survey and northeast corner of the Bizet survey, from which a double honey locust sixteen inches in diameter bears south thirty degrees and ten minutes west, distant ninety-seven links, and a black oak fifteen inches in diameter bears south sixty degrees and thirty-five minutes east, distant thirty-two and a half links;

Thence north twenty-eight degrees and forty-five minutes east with the eastern boundary of this survey and of the Grande Prairie field, at two chains ninety-one and two-thirds links a stone twelve inches long, twelve inches wide, & three inches thick, the northeast corner of the lot of Baptiste Riviere dit Bacanne's representatives, from which a black oak twelve inches in diameter bears south forty-three degrees and forty-five minutes west, distant thirty-nine and a fourth links, and a black oak sixteen inches in diameter bears north twenty-four degrees and twenty minutes east, distant eighty-six links five chains, eighty-three and one-third links to the beginning corner.

494 *Statement of the Interferences of Survey No.* 1813 *with Other Surveys.*

1st. Survey No. 1814, Baptiste Riviere dit Bacanne's legal representatives, a lot of 1 arpent in front by 40 in depth, claimed before Theodore Hunt, U. S. recorder of land titles, on the 28th July, 1825, as being bounded on the east by vacant land in a line with the eastern boundary line of the Grande pra-rie, north by the field lot formerly owned ny Rondo, west by vacant land in a line with the western boundary of the Big Pra-rie field, and south by the field

lot formerly owned by Baptiste Corno. (See Hunt's minutes, Book No. 2, p. 97.) This, it appears, is the same lot which, on the 10th January, 1770, was conceded to Antoine Bacanet by St. Ange & Labuxiere, viz., 1 by 40 arpens, bounded on one side by Rondeau and on the other by Martigny (alias Corno), and which, in conformity with said concession, was confirmed to Bacanet's representatives by the act of the 29th April, 1816, it being included in Recorder Bates' report of the 2d February, 1816. (See American State Papers, vol. 3, p. 280.) This survey is merged in survey No. 1813, and covers the south half thereof. Its area is thirty-four acres and forty-four hundredths of an acre (34.44 acres).

2nd. Section 16, township 45 north, range 7 east, of the 5 principal meridian, which is claimed by the township school; surveyed in the year 1818; interferes with survey No. 1813 to the amount of twenty-four acres and seventy-seven hundredths of an acre (24.77 acres).

3rd. Survey No. 903, a confirmation to Widow Camp's legal representatives of 200 arpens of land, made by the old board of commissioners under the 2nd section of the act of Congress of the 3d March, 1807; surveyed by Joseph C. Brown, deputy surveyor, under his contract of the 31st March, 1817. It is recorded in Book B, p. 244, a transcript whereof, it appears, was returned to the recorder of land titles on the 4th November, 1822, and by the said re-
495 corder patent certificate No. 298 was issued thereon on the 8th November, 1822. This survey interfer-s with survey No. 1813 to the amount of ten acres and seventy-six hundredths of an acre (10.77 acres).

The following surveys are founded upon certificates of relation issued by Frederick Bates, United States recorder of land titles for Missouri, under the provisions of the act of Congress of the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," and upon the locations respectively made by the holders thereof, viz:

4th. Survey No. 2712, certificate No. 348, issued to James Conway or his legal representatives for 200 arpens on the 20th November, 1817; located by Taylor Berry & Mathias McGirk on the 16th June, 1818; surveyed by Joseph C. Brown on the 23rd June, 1819; recorded on pages 110 & 111 of Book A; transcript returned to the recorder on the 9th May, 1823; patent certificate No. 322 issued on the 20th May, 1823; interfering area, twenty-seven acres and fifty-three hundre-ths of an acre (27.53 acres).

5th. Survey No. 2500, certificate No. 761, issued to Joseph Hunot or his legal representatives for 480 acres on the 12th August, 1816; located by Rufus Easton on the 16th June, 1818; surveyed by Joseph C. Brown on the 23rd June, 1819; recorded on pages 84 & 85, Book A; patent certificate No. 404 issued on the 2nd February, 1833; interfering area, five acres and eighty-one hundredths of an acre (5.81 acres).

Office of the surveyor general for Illinois and Missouri.

ST. LOUIS, *May* 31*st*, 1855.

Survey number one thousand eight hundred and thirteen, as platted and described in the foregoing record, is hereby approved.

496 JOHN LOUGHBOROUGH,
Surveyor General.

Office Register of Lands.

JEFFERSON CITY, MO., *April* 21*st*, 1876.

This is to certify that the foregoing is a true and correct copy of the United States survey No. 1813, in favor of Vincent Bouis' legal representatives under Pierre Chouteau, as approved by John Loughborough, surveyor general, May 31st, 1855, as the same appears of record on pages 193, 194, & 195 of a book entitled "Records F," which book is up to this day preserved on file in this office.

[SEAL.] GEORGE DIEGEL,
Register of Lands,
By D. KOCHTITZKY,
Chief Clerk.

(Defendant objected as incompetent and irrelevant. Court overruled objection, and def'ts duly excepted.)

Mr. HENDERSON: By whom was that survey, and when?

Mr. JEWETT: This is the surveyor general for Illinois, May, 1855, John Loughborough; survey.

Mr. HENDERSON: They forced Cozens to change his surveys. The probability is that survey is according to the orders of John Loughborough at that time, because that is the period of time when he had Cozens survey there, and he ordered it so to be made.

Mr. JEWETT: It is in 1850 and 1855 under instructions.

Mr. HENDERSON: Cozens returned his survey in 1855 and Loughborough ordered him to move it east.

Mr. JEWETT: This is made under instructions of the surveyor general.

Mr. HENDERSON: I do not want any plat put in here
497 unless in accordance with approved surveys.

Mr. JEWETT: They are surveyed both ways. In the first place they approved some which did not go as far as Cozens' did. Then they were moved in and they were approved, and finally instructions compelled him to move them out—the upper four lots.

Mr. HENDERSON: Exactly where he first put them?

Mr. JEWETT: Yes; the upper four lots he was compelled to move back again, and the only surveys are represented by the Mosberger map, when you extend the four lots marked on the Mosberger. I say the Mosberger map, when you take these little lines, represents the approved survey.

Mr. HENDERSON: All I say is this is not the approved survey.

Mr. JEWETT: It is approved both ways, but the last survey extended it, and here is the map, coming from the land office.

The COURT: Well, this map is offered subject to objections, and you can make the point further on.

(Map need not be copied; it may be read in court.)

Mr. HENDERSON: It has been overruled by the Government of the United States.

Mr. JEWETT: I say it has not been overruled.

Mr. HENDERSON: I say it has.

Mr. JEWETT: I say it is no such thing.

Mr. HENDERSON: You know it has been overruled.

Mr. JEWETT: I don't know it. I have stated exactly. The Mosberger map represents the present recognized United States survey by the last order of the Government.

Mr. HENDERSON: Your vehemence don't make the thing true.

Mr. JEWETT: I say it is true, and you can't produce a single record to the contrary.

498 Mr. HENDERSON: You know I have introduced the approved survey of the United States.

Mr. JEWETT: You haven't introduced the approved surveys of the United States.

The COURT: Let this map be offered subject to objection.

(Def'ts duly excepted.)

Mr. HENDERSON: I do not like to have a plat put in here simply on the authority of John Loughborough, when I have read the authority of the Land Office at Washington and of Jacob Thompson, the Secretary of the Interior, overruling it.

Mr. JEWETT: He has not overruled here, except on the four lots. I admit the last order is to extend the four upper lots.

Mr. HENDERSON: This Boise survey is put right on to the surveys Cozens surveyed, and these gentlemen knew this Boise survey extends to the western limits of the common field as originally surveyed by Cozens under the instructions of 1846.

Mr. JEWETT: Under the instructions of 1846 he never surveyed for Bouis.

Mr. HENDERSON: Don't you know the Bouis survey extends to the western limits?

Mr. SMITH: The survey of Bouis was made by instructions of the 22nd of Feb., 1855, and never until that time, because Cozens claimed the Rondeau and Bacanne claims belonging to that land, and therefore it was never made out there at all.

Mr. HENDERSON: Why not answer the simple question, Does not the Bouis survey as now located extend to the western limits as originally located in the common prairie fields—as originally located?

Mr. SMITH: As originally claimed by Cozens, yes; but there never was an original survey of Bouis made to the western limits of the common field as you claim them.

499 The first survey of Bouis was in 1855, and made to the true line.

The 2d survey in 1857 was extended.

The COURT: There is nothing to be gained by this matter at all. I have made a note that survey 1813 is objected to.

Objection overruled, and exception taken at time.

Plaintiffs' counsel next offered in evidence survey 3340 of Bizette. I admit in the instructions of the Secretary of the Interior it was afterwards shoved out 9 arpens further and another survey made of it, and in the Land Office you can find a copy of both surveys. We offer the one made in the instructions of 1855, and we offer the one made afterwards when they shoved it out 9 arpens further.

Survey No. 3340.

Plat and description of the survey of a tract of thirty-four acres and fifty-hundredths of an acre of land situated in the Grande Prairie common field of St. Louis, in township forty-five north of the base line, range seven east, of the fifth principal meridian, in the State of Missouri, executed by Wm. H. Cozens, deputy surveyor, in the years 1850 and 1855, under instructions from the surveyor general for Illinois and Missouri, dated the 9th May, 1846, and 22nd February, 1855, this being the lot conceded to Guillame Bizet on the 7th February, 1769, by St. Ange & Labuziere, Government officers for that part of Upper Louisiana then know- as the Illinois without the dominion of the Spanish Crown. See Levre Terrien No. 1, p. 21. It was confirmed to the legal representatives of Guillame Bizet by the act of Congress, approved on the 4th July, 1836, entitled "An act confirming claims to land in the State of Mis-
501 souri, and for other purposes," according to decision No. 286 of the board of commissioners appointed under the act of Congress of the 9th July, 1832, entitled "An act for the final adjustment of private land claims in Missouri" and the act of Congress of the 2nd of March, 1833, supplemental thereto.

(Here follows diagram marked p. 500.)

Description.

Beginning at a stone seventeen inches long, ten and a half inches wide, and five inches thick, set in the eastern boundary of the Grande Prairie common field, for the northeast corner of this survey and the southeast corner of the lot of Vincent Bouis' legal representatives under Pierre Chouteau, survey number one thousand eight hundred and thirteen, from which a double honey locust sixteen inches in diameter bears south thirty degrees and ten minutes west, distant ninety-seven links, and a black oak fifteen inches in diameter bears south sixty degrees and thirty-five minutes east, distant thirty-two and a half links;

Thence north sixty-one degrees west with the line between this survey and that for V't Bouis' representatives, at two chains and

ninety-three links the fence on the east side of Grande avenue; at four chains and eighteen links the fence on the west side of Grande avenue; at twenty-nine chains and eighty-three links intersecting the northern boundary line of the tract of Widow Camp's legal representatives, survey number nine hundred and three, at a stone twenty-eight inches long, six inches wide, & three inches thick set on the south side of a dead oak, from which a black oak four inches in diameter bears north sixty-one degrees west, distant thirty-two links, and a black oak nine inches in diameter bears
502 south six degrees and thirty minutes west, distant twelve links; at thirty-one chains and twenty-two links a board fence; at forty chains and twenty-five links a spring branch runs southeastward; at forty-nine chains and forty-three links a branch five links wide runs southwestward; at fifty-nine chains and forty-three links intersecting the west boundary of fractional section sixteen, township forty-five north, range seven east, being an eastern boundary line of the tract of James Conway, survey number two thousand seven hundred and twelve, at a stone; at seventy-two chains and seventy-three links a branch runs southwestward; at eighty chains and fifty-three links a board fence at a point thirty-three links southward from the southeast corner of Fennis' cow stable; at eighty-one chains and forty-three links the south side of said stable at a point seventy-two links westward from its southeast corner; at eighty-four chains and twenty-two links the north side of the stable; at eighty-four chains and eighty-four links a point in the line running with the west end of the stable twenty-four links northward from its northwest corner and one chain & thirty-eight links from its southwest corner; at ninety-five chains and eighty-five links a large set stone on the summit of a ridge; at ninety-nine chains and one link a fence; at one hundred and six chains and fifty-three links intersecting the north & south line between the tract of James Conway and that of Joseph Hunot, survey number two thousand five hundred, at a stone; one hundred eighteen chains and eighteen links to a stone thirty-two inches long, fifteen and a half inches wide, and six and three-quarter inches thick, set in a field, the northwest corner of this survey and the southwest corner of the survey for Vincent Bouis' legal representatives;

Thence south twenty-nine degrees and five minutes west with the western boundary of this survey, at two chains ninety-one
503 and two-thirds links to a stone nine and a half inches long, seven and a half inches wide, and three and a half inches thick, set in the field, the southwest corner of this survey, from which the chimney at the eastern end of J. S. McCune's brick house, situate on the western part of survey number thirteen hundred and thirty-two in the Cul-de-Sac field, bears south nineteen degrees and thirty minutes west, and the southeast corner of F. Baumgartnier's house, situate near the southeast corner of survey number twelve hundred and fifty-three in the Grande Prairie field, bears north seventy-eight degrees and fifty minutes east;

Thence south sixty-one degrees east with the southern boundary of this survey, at seven chains and sixty-five links a rail fence; at

thirteen chains and eighteen links intersecting the western boundary line of the James Conway tract at a stone set three chains and thirty-four links southward from the stone at the intersection of the said line with the northern boundary of this survey; at twenty chains and seventy links a fence; at twenty-five chains and eighty-four links a point, three and one-fourth links northward of a double black oak twelve inches in diameter, from which the northwest corner of a brick house built over the Marie spring bears south twenty degrees and fifteen minutes west, distant seven chains and sixty-seven links; at thirty-four chains and seventy-eight links a board fence in a direct line produced southward from the west end of Finn's cow stable; at thirty-nine chains and three links a fence in a line with the east end of the stable; at forty-two chains and fifty-two links a board fence; at forty-seven chains a spring branch runs southeast; at fifty-nine chains and sixty-five links intersecting the southern line of the Conway survey at a stone fourteen inches long, eight and a half inches wide, and two inches thick, from which a black oak twelve inches in diameter bears
504 north seventy-two degrees and forty-five minutes west, distant eleven links, and a stone at the southeast corner of said Conway survey bears south eighty-nine degrees and fifty minutes east, distant eighty-one links; at sixty chains and fifty-four links intersecting the western line of section sixteen at a stone thirteen inches long, ten inches wide, and three inches thick forty-four links southward from the southeast corner of the Conway tract, from which a black oak seventeen inches in diameter bears north twenty-seven degrees and fifteen minutes west, distant twenty-eight links, and a black oak eight inches in diameter bears north fifty-eight degrees east, distant thirty-two and a half links; at sixty-seven chains and fifty links a point one chain and fifty links northward of the Marie source of Conde spring; at sixty-eight chains and twenty-eight links a spring branch runs southwestward; at seventy-seven chains and fifteen links intersecting the northern boundary line of the Widow Camp's tract at a stone fourteen inches long, eight inches wide, & three inches thick, from which a black oak eighteen inches in diameter bears south twelve degrees and forty minutes west, distant forty-four and a half links, and a black oak eighteen inches in diameter bears south twenty-eight degrees and fifty-five minutes west, distant — links, and the stone at the intersection of the said Camp line with the northern boundary of this survey bears south seventy-five degrees and twenty-five minutes east, distant eleven chains and seventy-four links; at one hundred & fourteen chains and seventy links the fence on the west side of Grande avenue; at one hundred and fifteen chains and ninety-five links the fence on the east side of Grande avenue; one hundred — eighteen chains and thirty-six links to a stone fourteen inches
505 long, seven inches wide, & three inches thick, the southeast corner of this survey, from which a white oak thirteen inches in diameter bears south ten degrees and twelve minutes west, distant thirty-six links; a white oak seventeen inches in diameter bears north sixty-four degrees and ten minutes west, distant fifty links,

and a red oak fourteen inches in diameter bears north one degree and forty minutes west, distant thirty-two links; thence north twenty-eight degrees and forty-five minutes east with the eastern boundary of this survey two chains ninety-one and two-thirds links to the beginning corner.

Statement of Interferences of Survey No. 3340 with Surveys Previously Made.

1st. Survey No. 903, a confirmation to Widow Camp's legal representatives of 200 arpens of land made by the old board of commissioners under the 2nd section of the act of Congress of the 3rd March, 1807; surveyed by Joseph C. Brown, deputy surveyor, under his contract of the 31st March, 1817. It is recorded in Book B, p. 244, a transcript whereof it appears was returned to the recorder of land titles on the 4th November, 1822, and by the said recorder patent certificate No. 298 was issued thereon on the 8th November, 1822.

This survey interferes with survey No. 3340 to the amount of ten acres and thirty-six hundredths of an acre (10.36 acres).

2nd. Section 16, township 45 north, range 7 east, of the 5th principal meridian, which is claimed by the township schools, surveyed in the year 1818, interferes with survey No. 3340 to the amount of six acres and seventy-four hundredths of an acre (6.74 acres).

The two following surveys are founded upon certificate for relocation issued by Frederick Bates, United States recorder of land titles for Missouri, under the provisions of the act of Congress
506 of the 17th February, 1815, entitled "An act for the relief of the inhabitants of the late county of New Madrid, in the Missouri Territory, who suffered by earthquakes," and upon the locations respectively made by the holders thereof, viz:

3rd. Survey No. 2712, certificate No. 348, issued to James Conway or his legal representatives for 200 arpens on the 20th November, 1817; located by Taylor Berry & Mathias McGirk on the 16th June, 1818; surveyed by J. C. Brown on 23rd June, 1819; recorded on pages 110 & 111, Book A; transcript returned to recorder on the 9th May, 1823; patent certificate No. 322 issued on 20th May, 1823; interfering area, thirteen acres and seventy-six hundredths of an acre (13.76 acres).

4th. Survey No. 2500, certificate No. 161, issued to Joseph Hunot or his legal representatives for 480 acres on the 12th August, 1816; located by Rufus Easton on the 16th June, 1818; surveyed by Joseph C. Brown on the 23rd June, 1819; recorded on pages 84 & 85, Book A; patent certificate No. 404 issued on 2nd February, 1833.

There are two in-ferences of this survey with survey No. 3340, as follows, to wit, south of survey No. 2712 two hundredths of an acre, & west of survey No. 2712 three acres and sixty-four hundredths of an acre, together three acres and sixty-four hundredths of an acre (3.64 acres).

Office of the surveyor general for Illinois and Missouri.

ST. LOUIS, *September 6th*, 1855.

Survey number three thousand three hundred and forty as platted and described in the foregoing record is hereby approved.

JNO. LOUGHBOROUGH,
Surveyor General.

507 Office of the U. S. recorder of land titles.

ST. LOUIS, *June 15th*, 1874.

This is to certify that the foregoing plat and description of survey No. 3340 is truly and correctly copied from pages 198, 199, 200, and 201 of a book marked "Records F" of United States surveys, which book is up to this day preserved on file in this office.

STILLMAN D. FISH, *Recorder.*

Mr. HENDERSON: This don't come from the General Land Office but from John Loughborough.

Mr. MORRISON: This is certified by the recorder of land titles.

Mr. HENDERSON: I understand, because all these surveys were returned by John Loughborough to the recorder of land titles and had to be, and you cannot get a certificate at Washington like this to-day of a private survey.

Plaintiffs' counsel next offered in evidence another letter from John Loughborough, surveyor general, to William H. Cozens, dated August 7th, 1855:

Letter Sur. Gen'l Loughborough to W. H. Cozens, August 7, '55.

Office of the surveyor gen. for Illinois and Missouri.

ST. LOUIS, *August 7th*, 1855.

SIR: Application *having* been made to this office for the survey of the Grande Prairie field lot of 2 by 40 arpens, confirmed to Pierre Lacroix's representatives. This claim has heretofore been surveyed by you as lot No. 20.

I have made a recent re-examination of this claim in regard to its locality and find that your survey establishes its position so far correctly as its north and south boundaries and its immediate and intermediate connections with the adjacent and neighboring
508 lots are concerned. The east and west boundaries of your said survey, however, do not correspond with the east and west boundaries of the Grande Prairie field, and ought to be corrected.

You are, therefore, hereby authorized and requested to resurvey the said claim and establish such permanent corners thereto as the general printed instructions to deputy surveyors prescribed, and to note all remarkable objects which are intersected by its lines or connect with such as may lie near thereto.

You may begin your operations either at the southeast or southwest corner of the Bizet tract, now known as survey No. 3340. From

the southeast corner prolong the eastern boundary of the Grande Prairie field by running south 28° 45′ W. along several unconfirmed lots—at 8 arpens (23.33⅓ chs.) established the northeast corner of the Lacroix lot, and at ten arpens (29.16⅔ chs.) the S. E. corner thereof. In like manner, from the southwest corner of the Bizet tract prolong the western boundary of the said field on its established course, and at 8 & 10 arpens establish the northwest and southwest corner of the lot of Lacroix. Then connect the *the* northeast and northwest corners of the Lacroix lot by running its north boundary line parallel to the south boundary of the Bizet survey, and the southeast and southwest corner by running its south boundary parallel to its north boundary.

You will connect all your intersections with the lines of former established surveys to the nearest corners thereof, and set stones wherever it may be thought necessary by Mr. F. Mosberger, whom I have requested to accompany you into the field.

It is expected you will attend to this work without delay.

Very respectfully, your ob't servant,

JNO. LOUGHBOROUGH,
Surveyor General.

509 Wm. H. Cozens, Esqr., deputy surveyor, present.

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Jas. E. McHenry, register of lands for the State of Missouri, certify the foregoing to be a correct copy of a letter dated August 7, 1855, from Jno. Loughborough, surveyor general, to Wm. H. Cozens, deputy surveyor, as the same remains on file in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said office, at the city of Jefferson, this 27th day of May, 1879.

[SEAL.] JAS. E. McHENRY,
Register of Lands.

Plaintiffs next offered in evidence survey dated 1855, made in accordance with the instructions, numbered 1815. This is not an extended survey as made on the map there. It falls short. This purports to be made by Cozens.

Survey No. 1815.

Plat and description of the survey of a tract of sixty-nine acres and twelve-hundredths of an acre of land situated in the southern part of the Grande Prairie common field of St. Louis, in township 45 north of the base line, range seven east, of the fifth principal meridian in the State of Missouri, executed by William H. Cozens, deputy surveyor, on the 9th and 10th days of August, 1855, under instructions from the surveyor general for Illinois and Missouri, dated the 7th of the same month and year, this being the lot of two by forty arpens granted to Pierre Lacroix by St. Ange & Labuxiere, French officers of Upper Louisiana, on the 1st day of Oc-

tober, 1766. See Livere Terrien No. 1, fo. 9. It was confirmed
510 to Peter Lacroix's representatives by the 2nd section of the act of Congress of the 29th April, 1816, entitled An act for the confirmation of certain claims to land in the western district of the State of Louisiana, and in the Territory of Missouri, according to the decision of Frederick Bates, United States recorder of land titles, contained in his report of the 2nd February, 1816, to the Commissioner of the General Land Office. See American State Papers, vol. 3, p. 279, Duff Green's edition, & United States Statutes at Large, vol. 3, p. 328, L. & B.'s edition.

(Here follows diagram marked p. 511.)

512 *Description.*

Beginning at the northwest corner of this survey, a stone eighteen inches long, fourteen inches wide, and two and a half inches thick, set on the south side of a rail fence its full length into the ground, at a distance of twenty-three chains thirty-three and one-third links (equal to eight arpens) south twenty-nine degrees and five minutes west from the southwest corner of survey number three thousand three hundred and forty, which is in the name of Guillame Bizet or his legal representatives; from said stone, corner to this survey, a double pin oak fifteen inches in diameter bears south fifty degrees and thirty minutes west, distant two hundred and twenty-one links;

Thence south twenty-nine degrees and five minutes west with the western boundary of this survey, five chains eighty-three and a third links to a stone twenty inches long, thirteen inches wide, & three inches thick, set into the ground, the southwest corner of this survey, from which a pin oak twelve inches in diameter bears north sixty-three degrees and thirty minutes west, distant twenty links; a pin oak eleven inches in diameter bears south nineteen degrees east, distant thirty-nine links, and a black jack thirteen inches in diameter bears south fifty-one degrees and thirty minutes east, distant forty-eight links;

Thence south sixty-one degrees and ten minutes east with the southern boundary of this survey, at nine chains and forty-two links a pin oak fifteen inches in diameter; at twenty-seven chains and eighty-one links the western palisade enclosure of an orchard near the southwest corner thereof; at twenty-eight chains and twenty-six links the southern enclosure of the orchard; at thirty-five chains and forty-six links a rail fence; at thirty-nine chains and seven links a rail fence; at forty-seven chains and fifteen links a rail fence; at sixty chains and fifteen links a rail
513 fence; at seventy-four chains and five links a rail fence; at seventy-seven chains intersecting the western boundary line of survey number nine hundred and three in the name of Widow Camp's legal representatives, it being the most eastern line of the Joseph Hunot tract, survey number two thousand five hundred, at a stone fourteen inches long, twelve inches wide, and five inches thick set into the ground three chains and seventy-three links

distant north twenty minutes west from the southwest corner of the Widow Camp's tract; from the stone at said intersection a red oak twenty-one inches in diameter bears south sixty-four degrees east, distant eleven links; a red oak twelve inches in diameter bears north forty-six degrees west, distant fifty-three links, & a red oak fourteen inches in diameter bears north thirty degrees and thirty minutes east, distant sixty-two links; at eighty-two chains and ninety-two links the center of a creek which runs southeastward; at eighty-five chains & twenty-six links intersecting at a stake and mark on fence the western line of survey number three hundred and sixty-three in the name of Auguste Chouteau under Laclede Legest (Liguest), one chain and fifty-eight links north fifteen degrees east from a stone the northeast corner of the Cul-de-Sac field of Emelian Yosty under J. B. Deschamps' survey number one thousand three hundred and thirty-two and a corner to the Widow Camp tract; at ninety-five chains and ninety-six links a point opposite the northeast corner of Stietzmeier's house twenty-eight links northeastward therefrom; at ninety-seven chains and fifty-six links the fence on the north side of Manchester road; at ninety-nine chains and forty-one links the fence on the south side of Manchester road; at one hundred six chains and twelve links the fence on the west side of Cabanne street; at one hundred six chains and ninety links the fence on the east side of Cabanne street; one hundred eighteen chains and fifty links to a stone nineteen inches long, fourteen
514 inches wide, and three inches thick, its full length set into the ground, the southeast corner of this survey, from which the northwest corner of the upper stone-abutment wall to the bridge over Mill creek on the Pacific railroad bears south three degrees and ten minutes east, distant seven chains and twenty-nine links;

Thence north twenty-eight degrees and forty-five minutes east with the eastern boundary of the survey, at five chains and sixty-two links the fence on the south side of Manchester road, five chains eighty-three and one-third links to a stake set in the drain on the south side of the macadamized part of the road, the northeast corner of this survey, from which the southeast corner of the stone house on Mr. Gibson's land bears north sixteen degrees and forty-two minutes east, distant two chains and twenty-six links, and the southeast corner of the Bizet survey number three thousand three hundred and forty bears north twenty-eight degrees and forty-five minutes east, distant twenty-three chains thirty-three and one-third links (equal to eight arpens);

Thence north sixty-one degrees and ten minutes west with the northern boundary of this survey, at three chains and nine links the fence on the north side of Manchester road; at six chains and fifty-one links the fence on the east side of A. H. Evans' land; at twelve chains and two links the fence on the west side of said Evans' land; at twenty chains and forty links a fence; at twenty-six chains and fifty-seven links a fence; at thirty chains and sixty-one links a fence; at thirty-four chains and seventy links intersecting at a stake and mark on the fence the western line of survey number three hundred and sixty-three, from which the stake at the inter-

section of said line with the south boundary of this survey bears south fifteen degrees west, distant five chains and ninety-eight links; at forty chains and eight links intersecting the center line of the mill-dam in Widow Camp tract, which bears south eighty-
515 nine and a half degrees west; at forty-four chains and seventy-eight links intersecting the western boundary line of the Widow Camp tract and the most eastern line of the Joseph Hunot tract, at a stone fourteen inches long, eleven inches wide, and four inches thick, from which a red oak twenty inches in diameter bears south fifty-six degrees west, distant one hundred and fifty links, and a wild cherry tree twenty inches in diameter bears north forty-seven degrees and forty-five minutes west, distant one hundred and fifteen links (a creek intervening between said stone and the tree); from this stone the stone at the intersection of said line with the southern boundary of this survey bears south twenty minutes east, distant six chains and sixty-four links; at forty-five chains and nine links the center of a creek twenty-eight links wide; at forty-six chains and seventy-eight links a rail fence; at fifty-nine chains and fifteen links a rail fence; at seventy-one chains and twenty-four links a rail fence; at eighty chains and ninety-three links a rail fence; at eighty-four chains and sixty-five links a point in a line with the eastern fence of an orchard which bears south thirteen degrees and thirty-five minutes west; at eighty-five chains and thirty links a point in a line with the northern fence of the orchard which bears north seventy-eight degrees and forty-five minutes west; at ninety-two chains and forty-six links a point in a line with the western fence of the orchard if produced northward which bears north twelve degrees east; at one hundred two chains and sixty-two links a rail fence, one hundred eighteen chains and fifty links to the beginning corner.

Statement of Interferences of Survey No. 1815 *with Survey Previously Made.*

Survey No. 363. A confirmation to Auguste Chouteau under Laclede Legest (Liguest) by the old board of commissioners as per their certificate No. 363, dated the 7th June, 1810, issued
516 under the provisions of the 2nd section of the act of Congress entitled An act respecting claims to land in the territory of Orleans & Louisiana, passed the 3rd March, 1807, an- according to a survey made by Silas Bent, principal deputy surveyor; as ordered by the said board on the 24th January, 1809, a plat and description of which was returned to them by the said surveyor under date of the 29th November, 1809. See commissioners' minutes, book No. 3, p. 439.

This survey interferes with survey No. 1815 to the amount of nineteen acres and eighty-one hundredths of an acre (19.81 acres) Survey No. 903, a confirmation to Widow Camp's legal representatives of 200 arpens of land made by the old board of commissioners under the 2nd section of the act of Congress of the 3rd March, 1807; surveyed by Joseph C. Brown, deputy surveyor,

under his contract of the 31st March, 1817. It is recorded in Book B, page 244, a transcript whereof, it appears, was returned to the recorder of land titles on the 4th November, 1822, and by the said recorder patent certificate No. 298 was issued thereon on the 8th November, 1822. It interferes with survey No. 1815 to the amount of five acres and thirty-five hundreths of an acre (5.35 acres).

Survey No. 2500, certificate No 161, issued to Joseph Hunot or his legal representatives for 480 acres on the 12th August, 1816, by Frederick Bates, United States recorder of land titles for Missouri, in conformity with the provisions of the act of Congress of 17th February, 1815, for the relief of the inhabitants of the county of New Madrid who suffered by earthquakes; located by Rufus Easton on the 16th June, 1818; surveyed by Joseph C. Brown on 23rd June, 1819; recorded on pages 84 & 85, Book A; patent certificate issued 2nd February, 1833; interfering area, forty-three acres and ninety-six hundredths of an acre (43.96 acres).

Office of the surveyor general for Illinois and Missouri.

ST. LOUIS, *August 28th*, 1855.

517 Survey No. one thousand eight hundred and fifteen, as platted and described in the foregoing record, is hereby approved.

JNO. LOUGHBOROUGH,
Surveyor General.

STATE OF MISSOURI, OFFICE OF REGISTER OF LANDS.

I, Rob't McCulloch, register of lands of the State of Missouri, do hereby certify the above and foregoing to be a correct copy of the plat and description of survey No. one thousand eight hundred and fifteen (1815), in the name of Peter Lacroix's representatives, as the same appears of record in Book F, pages 196, 197, and 198, of record of surveys now on file in this office.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said office, at the city of Jefferson, this 14th day of January, 1882.

ROBERT McCULLOCH,
Register of Lands.

Mr. HENDERSON: This is a survey made under the orders of John Loughborough.

Mr. JEWETT: I don't care who ordered it.

At this point recess was taken until 2 o'clock.

Plaintiff- recalled as a witness W. H. COZENS, who testified as follows:

Examination by Mr. JEWETT:

1 Q. Have you been out to see that ground since you were here yesterday?

A. I was out this forenoon. I told you yesterday I thought I had the data, but on examining my papers I found I had not, and so

this morning I sent word to Mr. Jewett not to expect me and I would go to the ground and get it exactly.

518 2 Q. Have you been on the ground?

A. Yes, sir.

3 Q. And taken the measurements?

A. Yes, sir.

4 Q. Be good enough to say what they are—the distance from the spring.

A. I made a sketch this morning. Here it is exactly, the whole thing—the Conway tract, the Hunot tract; and here is the Stokes tract, and here is the spring, the Grande Marie spring, and the little spring in the road; and here is the remains of the old Hammond house, in the corn field.

5 Q. Be good enough to state the distance from the west line of the Conway survey.

A. And the east line of Hunot?

6 Q. Yes.

A. I found that lying exactly 12 feet from that corner, the Hunot line 12 feet west of the southwest corner of Maryland avenue and Cornelia.

7 Q. Be good enough to state how far the old house is from the Hunot line. That's what I wish to get at—from the east Hunot line.

A. It is 410 feet to the chimney from Maryland Ave.

8 Q. It is 410 feet east of the east line of the Hunot survey?

A. No, no; of the Conway.

9 Q. From the west line of the Conway?

A. Yes; the east line of Hunot and the west line of the Conway.

10 Q. The same thing, isn't it?

A. Yes. I have written here east boundary line of Hunot and west boundary line of Conway.

11 Q. 410 feet?

A. 410 feet to the chimney,

12 Q. How far is it to the spring from the same line?

A. 626 — and 5 inches to the spring, right in the northwest corner of the brick house. The whole valley is covered with water now—all that place. Water is about two or three feet deep in there. That's a powerful spring.

13 Q. How far is the spring south of Maryland avenue?

A. 145 feet, and the house 107 feet.

14 Q. Maryland avenue is the north line of the Conway tract?

519 A. Oh, no; the Conway tract is half a mile square.

15 Q. All we want to know is how far it was from the east line of the Hunot survey. The house is how many?

A. 410 feet.

16 Q. And the spring?

A. 626 feet; so that there is between the spring 206 feet, between the house and the spring. I said just about 200 feet. It is 206 feet exactly.

17 Q. And the house and spring are both on the Conway tract?

A. Both on the Conway tract, The house is on the hill, along here (indicating). It begins right there and runs around this way.

Plat referred to is marked Exhibit "W. Cozens' survey of the location of the Hammond house and spring with reference to the Conway lines."

18 Q. Look at that map. See if you recognize it as what is known as map X.

A. Yes, sir.

19 Q. Well, sir, what is map X designed to indicate?

A. It was a map prepared by William Milburn, surveyor general, representing fields adjoining the city of St. Louis—adjoining the original town of St. Louis.

20 Q. And the out-boundary lines?

A. And the out-boundary line—all the fields.

21 Q. Under what act do you understand that out-boundary line to have been run, to designate?

A. I think he did that under the act of 1812, if I recollect right. I am not positive—yes, under the act of 1812.

22 Q. This map was designed, wasn't it, to indicate the out-boundary lines as required by the act of 1812?

A. Yes, sir; that was prepared by him in the office of Mildurn. I have seen him frequently.

23 Q. This is a plat, known as plat X, that represents the out-boundary lines, does it?

A. Yes, sir—that is, the fields of the town in the Grande
520 Prairie fields. They come up to the Cul-de-Sac and Prairie fields.

24 Q. The design of it was to comply with the provisions of the act of 1812?

Defendants' counsel objected.

25 Q. What was it designed to indicate?

A. That plat was made by him to show the field lots belonging to the town of St. Louis.

26 Q. Under what act?

A. Under the act of 1812. He left out all the fields that were around St. Louis. He left them out and took in the St. Louis fields and the Little prairie.

27 Q. Is this map known as the map indicating the locations as made by the land department of the out-boundary lines under the act of 1812?

A. That is what it is intended for.

28 Q. It is called map X, is it?

A. Yes, sir; and known as map X.

29 Q. Now, how far outside of the out-boundary lines is laid down on the map X is this land in controversy, the Hunot claim?

A. It is way out here (indicating).

30 Q. About how far is way out here or somewhere near?

A. About a mile.

31 Q. It's a mile outside, then?

A. Yes, sir; it left out all the Prairie de Noyer claims, the Carondelet common field, the Grande Prairie and Cul-de-Sac fields; left them all out, and the White Ox prairie, above on the river; left them all out.

32 Q. But what I wish to show is how far outside.

A. At least one mile.

(By the COURT:)

33 Q. Where would lot 50 be? In what direction on this map?

A. About a quarter of a mile west of that point (indicating). It's nearly a mile west of that spring.

34 Q. The Dameron lot is between Cornelia Ave. and this lot in controversy and south of Coleman?

A. Yes; Dameron is west of Cornelia.

35 Q. That is over a thousand feet long?

A. Yes, sir; 1,200 feet.

36 Q. Then comes the Baker lot?

A. Yes, sir.

521 37 Q. Then comes Taylor avenue, and the Baker lot is west of Taylor avenue?

A. It is 1,200 feet from there—that is, to the east edge—and two streets.

38 Q. 1,200 feet and two streets out before you strike the lot in controversy?

A. Yes, sir.

Cross-examination by Mr. HENDERSON, counsel for the defendant:

1 X Q. Who made this plat?

A. General Milburn.

2 X Q. Did he do it upon the field? Did he make field-notes of this survey?

A. Oh, no; he took the data for it in the surveyor general's office.

3 X Q. He made up the map in the office?

A. Yes, sir.

4 X Q. And he never did any field work at all?

A. Never did any field work at all.

5 X Q. Haven't you many surveys of the Grande Prairie common fields confirmed under the act of June 13th, 1812, outside of this survey?

A. Oh, plenty of them.

Mr. JEWETT: They are all outside of it; pretty near?

WITNESS: It don't take in a single Grand Prairie field nor a Cul-de-Sac nor a Prairie de Noyer.

6 X Q. Do you know why Milburn made this map? It don't comply with the act of 1812, does it?

Mr. JEWETT: That is not for the witness to say.

WITNESS: The act of 1812 required the Grand prairie and all the common-field lots around St. Louis should be taken in. That plat

never was recognized as having any effect whatever by the clerks in the office. Sprague was chief clerk in the office at that time, and he denounced it from A to izzard, and it was never recognized by any other surveyor general afterwards.

6 X Q. Now, in 1823 Hammond lived here, did he?

A. Yes, sir.

522 7 X Q. He had bought this land in the Hunot claim?

A. Yes, sir.

8 X Q. This is the line of the Hunot claim (indicating)?

A. Yes, sir.

9 X Q. Did he ever own any land that you know of in the Conway claim?

A. No, sir.

10 X Q. Were the lines at that time, in 1823, and a short time afterwards still distinguishable there between these two claims?

A. No.

11 X Q. Was there anything to determine where the lines were?

A. No; didn't know where the lines were when I run them in 1846, hardly. There was an old fence. Here is a spring and here is high ground (indicating), and right there across there there was a fence that was up, and north of that, at the edge of the timber, a board fence that run right across here between the house and the spring right across that way. It was there in 1862, when that partition of the Lindell estate was made; used to be across that way, and I suppose that is what they recognize as the line at that time.

12 X Q. The line between the two claims?

A. Yes; east of the house on the high ground and west of the spring.

13 X Q. Did anybody know until you made that survey out there where the line really was?

Counsel for the plaintiff objected to the question.

A. I hardly think they did; I don't think they did.

14 X Q. Do you know whether anybody pointed out the line where it was understood to be when you made the survey?

A. No, sir.

15 X Q. This fence—do you understand anything about that? What was understood by the inhabitants there?

A. Let me tell you about this survey here. My instructions required me to run out the New Madrid locations to connect my surveys across this way (indicating) my common-field lots, and I run that line out and put a stone on it, and Lindell said, "Why, the line is over here." He claimed it to be there where McPherson's land is.

523 16 X Q. Do you know whether Lindell always claimed that house as being on the Hunot claim?

A. I suppose so, because he said the Hunot land came there. That's the best information I have; that's 1846 and '47.

17 X Q. Did you know Lindell well?

A. Ever since I can recollect.

18 X Q. Do you know under what deeds he pretended to claim ownership and possession of this land out there?

A. In 1837 he employed Joseph C. Brown to retrace all his land. Mr. Joseph C. Brown was taken sick. He lived up in the country just west of Spanish pond, and he couldn't complete it, and the old gentleman put a fence up, and he wanted the lands surveyed there, and Brown employed me, as I had been with him as a surveyor, to run out the line, and I did so. That was in 1838; put up a new fence all around the land; put posts up and cut holes in them in this way, mortised the holes in them—cedar posts; took the rails and thinned them off at the ends and put them in that way as he went along; what they called a Maryland fence, not a Virginia fence. You came from Maryland, the eastern portion of it, and you know what it is, and he put this fence up and I retraced this line around.

19 X Q. What line?

A. The out boundaries. He didn't run any fences inside. He made the fences just where he pleased inside. They were only for field purposes, not boundaries for certain claims; but I mean out-boundary lines. He put up a fence all around, and some of those old fences are there yet.

20 X Q. That was the out-boundary line of the New Madrid survey?

A. Yes, sir; and of his common-field lots. Under Laroche he had half of that eastern portion of it.

21 X Q. You run this out in 1838?

A. Yes, sir; and then I had all the deeds there—the sheriff's deeds.

28 X Q. What sheriff's deeds?

A. The sheriff's deeds of the Hammond property to him.

524 23 X Q. You mean the Walker deed?

A. And the O'Fallon deed and all his deeds out there. He gave me all his papers and all his plats.

24 X Q. Do you know whether he claimed under the sheriff's deed of John K. Walker and the O'Fallon deed under that?

A. Yes, sir; he had these deeds; gave me all.

25 X Q. Do you recollect whether he made a claim under Stokes' survey of a portion that Easton sold to Stokes—whether he claimed that also?

A. Oh, yes; that 234 acres.

26 X Q. And then the balance of the claim, I understand, he claimed by virtue of the sheriff's deed of John Walker?

A. Yes, sir.

27 X Q. And you know he occupied or claimed the land by virtue of this instrument?

A. I do.

28 X Q. How long did you know him to be in actual possession there under that claim? When did he first set up that claim, to your knowledge?

A. The first time I knew his farm was in 1833. In 1832 we had the cholera here, and I was taken out of school and carried to Flor-

issant to get rid of the cholera, and in 1833 I came back to the university, and it broke out again, and I then staid at home. They discharged all the students, and I staid at home in the city, and I used to go out there frequently and spend a day out there, hunting and gathering nuts and things there, and I used to be on his place frequently, in 1833, the first time I knew that piece of ground. Then I used to go often in the season for hunting and nutting, and I knew the place very well. I used to go there for water.

29 X Q. After 1840 you frequently surveyed for him?

A. Oh, yes; after that I did all his surveying.

30 X Q. You know he claimed under these deeds because he gave them to you?

A. Yes, sir.

(By Mr. JEWETT:)

31 X Q. Did he give you the old original deed of Sheriff Walker to Relfe and Chew?

A. Yes, sir.

32 X Q. That was in 1838 you think you had them?

525 A. I think in 1838. I think I had all his deeds—that he gave me all his papers.

33 X Q. You think you had that old deed?

A. I went out; he gave me a horse, and I rode to Joseph C. Brwon's and staid with him over night, and the next day I had special instructions. I was a young man, and I had special instructions how to make the survey.

34 X Q. You think you had Stokes' deed to him from somebody?

A. I think I had the O'Fallon deed.

35 X Q. You are quite sure you had Sheriff Walker's deed?

A. Yes, sir; had all the deeds.

36 X Q. You had Sheriff Walker's deed, did you?

A. Had all the deeds; had all his papers.

37 X Q. You think that was in 1838 you run out these outboundaries of these surveys?

A. I didn't run the Conway tract. I run the exterior boundary of all the lots claimed for fencing purposes, but not the entire boundary.

38 X Q. You didn't trace out the Conway tract?

A. Oh, no; the outboundaries only.

39 X Q. All the land that he claimed, he says, "I claim out here," and you run a sort of a line there?

A. Oh, no; I went by the records. There was no "sort of a line" about it. I didn't do that kind of business.

40 X Q. What tracts or surveys did you cover there?

A. I run out his Widow Camp tract. That was the most eastern tract he had, and when he came to the east boundary of the Grand Prairie common fields, then known, it hadn't been retraced by me at all, but as then known. Then he took the center line of the south arpent of the Laroche tract and went out for 20 arpents in depth until we came to land belonging to David Desilet. Then,

after offsetting at the south one arpent, run along Desilet's south boundary until we went along beyond where Taylor avenue is now, along to Lake avenue, and then he run on the north two
526 arpents around Desilet and east to the east boundary of the Hunot claim, and then he run north of the Hunot claim until he struck the Desilet claim.

41 X Q. Up the Olive-street road?

A. Across the Olive-street road—not up. There was no Olive-street road in those days—no road there at all.

42 X Q. Up to where it is now?

A. Yes. It's 350 feet north of that road; just followed the Hunot claim between here and Genereaux—that is, Taylor owned it then and lived on it, and then we fol-owed that line between here and afterwards called the Lay tract, and John Lay bought Mr. Genereaux —, I suppose, up to what we now call King's highway. King's highway wasn't opened then; there wasn't no King's highway going south down to the Gratiot tract. The center of what is now called King's highway run to Forest park, and when we got to Gratiot tract we followed the Gratiot tract until we came to the northeast corner, and then we went south of the Cul-de-Sac road to Samuel Phillipson, and then we followed that lot clear east to the east boundary of the Cul-de-Sac field, and that was the west boundary of the Chouteau mill tract survey 363, and then we went north to the northeast corner of the Chouteau mill tract, which is the center of Laclede avenue now, and we followed Laclede avenue west until we came to his east boundary, the southeast boundary of the Camp tract, and then went north on the Camp tract to the place of beginning. I went the whole exterior boundary of all his land, but never inside.

43 X Q. Had you the Hunot deed of 1834, do you think?

A. I don't know; he gave me all his papers—a box of them.

44 X Q. But you don't remember whether that was one of them—this deed from Hunot to Lindell?

A. No; I don't think I had that deed then; I don't know.

45 X Q. You don't remember it?

A. I don't remember it; no, sir. He brought them down
527 to my office with old Rene Paul, who was my preceptor, on the corner of Elm and Fourth streets; he brought the papers there and he gave them to me, and then we told him that we would like to see Brown, and he gave me a horse, and I went to see Brown, and then I surveyed all his land for him.

Mr. HENDERSON: Restate to the court what time you surveyed this land in here.

A. Not until 1841.

46 X Q. You had his deed then to that?

A. No; not then.

47 X Q. Did you subsequently?

A. When I surveyed his land I had all his plats.

48 X Q. Did you afterwards in dividing out his land?

A. No, sir.

49 X Q. In running the line between the two railroads did you have the deeds?

A. No; I got my information from the surveyor general's office.

(By Mr. MORRISON:)

19 X Q. Conway was surveyed before that?

A. Yes, sir.

Mr. HENDERSON: You are satisfied that Lindell set up his claim to possession under the conveyance from John O'Fallon under the sheriff's deed?

A. I think he did. I had the O'Fallon deed and all the papers—all the papers he had in that box.

COUNSEL FOR THE PLAINTIFF: We now offer map X.

(Need not insert; may be used in court. Def'ts objected; overruled, and def'ts duly excepted.)

(By the COURT:)

20 X Q. In 1838 where did you put the outboundary lines there?

A. Of what?

21 X Q. Of the possession he claimed.

A. Oh, he was a mile west of here (indicating), nearly three-quarters of a mile west—half a mile, nearly—and a mile and a half south.

22 X Q. He interferred with all this claim?

A. Everything.

23 X Q. That came under the Camp and Hunot?

A. Everything.

24 X Q. Including the lot in question?

A. Yes, sir.

Mr. JEWETT: There is no doubt he covered the lot in ques-
528 tion ever since 1833.

(Witness retires.)

Mr. JEWETT: We now put in the entire depositions as to the residences of the plaintiffs during the war. They have already been copied, as they are the depositions of the same witnesses to prove heirship offered in evidence.

We next offer a certified copy of survey 2037 of Charles Gratiot to the Gratiot league, so as to show this location constitutes a portion of the southern boundary of the Hunot claim.

(Here follows diagram marked p. 529.)

529 Surveyed for Charles Gratiot, claiming in his own right, 6,720 arpens, equal to 5,716.70 acres. Beginning at his N. E. corner-stone, marked C. G., thence S. 8° 40′ W. 107 ch. 101, a field of corn; 243 ch. 30 L., the S. E. corner of the survey, a stone as before; thence N. 83 W. 196 chs. 50 L. a creek 50 L. wide bears S. E.

208.00 chs., a creek 50 L. wide bears N. E.; 223 chs. 00 L. crossed same creek, bearing from N. W.; 235.00 chs. set a post, the S.W. corner, from which a W. oak 16 inches dia. bears N. 40 E. 222 lks.; thence N. 8° 40′ E. 3.00 chs. a creek 40 L. wide bears E. 11 chs. 50 L., intersect. the line between sections 27 & 34, T. 45 N., R. 6 E., — ch.
530 40 L. east of the corner; 343.00 chs. set post, N. W. corner, from which a B. jack 8 inches dia. bears S. 11 E. 57 L., and a black-jack 3 inches dia. bears N. 35 W. 4 lks.; thence S. 83 E. with Papin's line 113 ch. 95 lk. a creek 50 L. wide bears S. E.; 147.00 chs., creek; 149 chs. 50 lks., creek; 158 ch. 50 L., creek; 210.00 chains, left creek, bearing south; 235.00 chains, the beginning.

October, 1817.

JAS. C. BROWN, *D. S.*

STATE OF MISSOURI, OFFICE REGISTER OF LANDS.

I, Robert McCulloch, register of lands for the State of Missouri, do hereby certify the annexed and foregoing to be a correct copy of the plat and field-notes of the survey of survey No. 2037 in the name of Charles Gratiot, claiming in his own right, as the same appears of record in B, page 345, of record of private surveys now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of office of the register of lands, at the city of Jef-
[SEAL.] ferson, this 17th day of August, 1885.

ROB'T McCULLOCH,
Register of Lands.

We next offer survey 1270, in favor of Bacanne's representatives, or, rather, certified copy of the survey.

Survey No. 1270.

Plat and description of the survey of a tract of land of fifty acres and eighty-seven hundredths of an acre situate in township forty-five north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, executed in August and September, eighteen hundred and thirt'-eight, by Joseph C. Brown, deputy surveyor, under his contract with Elias T. Langham, surveyor of the public lands in the State of Illinois and Missouri, dated the
531 fifteenth of September, eighteen hundred and thirty-five, this being the tract of one and a half by forty arpens in the Grand Prairie common field of St. Louis granted to Antoine Bacane on the thirtieth of January, seventeen hundred and sixty-seven, by St. Ange and Labuxiere, officers of the Government in the Spanish province of Upper Louisiana, and confirmed to Antoine Bacane or his legal representatives under the second section of the act of Congress of the third of March, eighteen hundred and seven, entitled "An act respecting claims to land in the Territories of Orleans and Louisiana," by the board of commissioners appointed under the act of Congress of the second of March, eighteen hundred and five, entitled "An act for ascertaining and adjusting the titles and claims to

land within the territory of Orleans and district of Louisiana," as for their certificate numbered one thousand two hundred and seventy, issued on the eighteenth of October, eighteen hundred and eleven. This tract was also confirmed to A. Bacane's representatives by the act of Congress of the twenty-ninth of April, eighteen hundred and sixteen, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the Territory of Missouri." See Livre Terrien, Book No. 1, page 10; minutes of the board of commissioners, Book 5, page 372; Recorder Bates' Minutes, page 142; Bates' Decisions, page 6, all in the office of the recorder of land titles in the State of Missouri. See also American State Papers, vol. 2, page 601; vol. 3, page 279, Duff Green's edition, 1834.

T. 45 N., R. 7 E., of the 5th p'l M:

(Here follows diagram marked p. 532.)

532 *Description.*

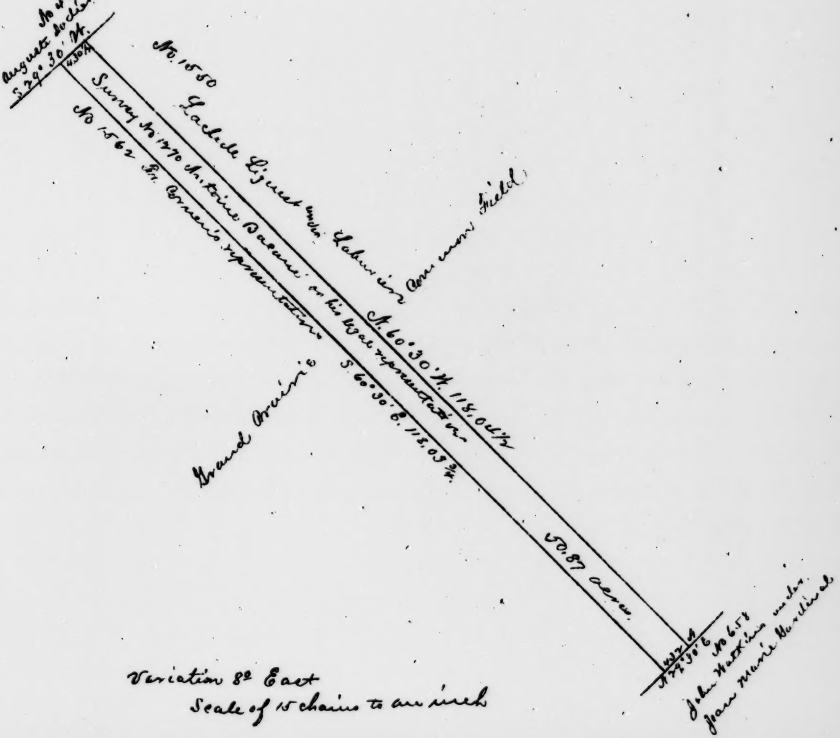
Beginning at a stone in the western boundary of survey numbered six hundred and fifty-eight, in the name of John Watkins, under Jean Marie Cardinal, the southeast corner of survey numbered one thousand five hundred and fifty, in the name of Laclede Liguest, under Labuxiere, and the northeast corner of this survey, from which a black-jack five inches in diameter bears north fourteen degrees and fifteen minutes east, thirty-seven links distant, and a pin oak five inches in diameter bears south thirty-six degrees and fifteen minutes west, forty-five and a half links distant;

Thence north sixty degrees and thirty minutes west, with
533 the southern boundary of the Laclede Linguest survey, one hundred and eighteen chains and four and a half links to a post in the southeast boundary of survey numbered four hundred and twenty-two, in the name of Auguste Dodier, the southwest corner of the Laclede Linguest survey and the northwest corner of this survey, from which a red oak five inches in diameter bears south eighty-seven degrees east, two and forty-seven links distant, and a red oak five inches in diameter bears north thirty-four degrees and fifteen minutes west, one hundred and forty-five and a half links distant;

Thence south twenty-nine degrees and thirty — west, with the southeast boundary of the Auguste Dodier survey, four chains and thirty and a half links to a post, the northwest corner of survey numbered one thousand five hundred and sixty-two, in the name of Fr. Corneau's representatives, and the southwest corner of this survey, from which a red oak five inches in diameter bears south sixty-seven degrees and forty-five minutes west, one hundred and forty links distant;

Thence south sixty degrees and thirty minutes east, with the northern boundary of the Fr. Corneau survey, one hundred and eighteen chains and three and three-fourths links to a post in the western boundary of the John Watkins survey, the northeast corner

No 114
Hammond et al
vs.
Johnston Recr.
p 532



of the Fr. Corneau survey and the southeast corner of this survey, from which a pin oak eighteen inches in diameter bears north eighty degrees and fifteen minutes west, one hundred and seventy-one links distant, and a cottonwood twelve inches in diameter bears south six degrees west, sixty links distant;

Thence north twenty-nine degrees and thirty minutes east, with the western boundary of the John Watkins survey, four chains and thirty-two links to the beginning corner.

534 Office of the surveyor general for Illinois and Missouri.

SAINT LOUIS, *December 4th*, 1860.

The foregoing plat and description of survey number one thousand two hundred and seventy are hereby approved as recorded on pages three hundred and eighty-four, three hundred and eighty-five, and three hundred and eighty-six of this book.

JOHN LOUGHBOROUGH,
Surveyor General.

(NOTE.)—A certified copy of the plat and description of survey No. 1270 was returned to the recorder of land titles on the 28th June, 1862.

STATE OF MISSOURI, OFFICE OF THE REGISTER OF LANDS.

I, Robert McCulloch, register of lands for the State of Missouri, do hereby certify the annexed and foregoing to be a correct copy of the plat and field-notes of the survey of survey No. 1270, in the name of Antoine Bacane or his legal representatives, as the same appears of record in Book F, pages 384, 385, & 386, of record of private surveys now on file in my office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of office of the register of lands, at the city of Jefferson, this 17th day of August, 1885.

ROB'T McCULLOCH,
Register of Lands.

We next offer a certified copy of Francis Corneau's survey 1562 to explain certain claims:

Survey No. 1562.

535 Plat and description of the survey of a tract of land of fifty acres and eighty-seven-hundredths of an acre, situate in township forty-five north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, executed in August and September, eighteen hundred and thirty-eight, by Jos. C. Brown, deputy surveyor, under his contract with Elias T. Laugham, surveyor of the public lands in the States of Illinois and Missouri, dated the fifteenth of September, eighteen hundred and thirty-five, this being the tract of one and a half by forty arpens in the Grande Prairie common fields of St. Louis, granted on the thirtieth of January, seventeen hundred and sixty-seven, to Francois

Corneau by St. Ange and Labuxiere, officers of the government in the Spanish province of Upper Louisiana, and confirmed to Francois Corneau's representatives by the act of Congress of the twenty-ninth of April, eighteen hundred and sixteen, entitled "An act for the confirmation of certain claims to land in the western district of the State of Louisiana and in the Territory of Missouri." See Livre Terrien, Book No. 1, page 10, Recorder Bates' Minutes, page 141, and Bates' Decisions, page 6, all in the office of the recorder of land titles in the State of Missouri; see also American State Papers, vol. 3, page 279, Duff Green's edition, 1834.

(Here follows diagram marked p. 536.)

536 *Description.*

Beginning at a point in the western boundary of survey numbered six hundred and fifty-eight, in the name of John Watkins, under Jean Marie Cardinal, the southeast corner of survey numbered one thousand two hundred and seventy, in the name of Antoine Bacane or his legal representatives, and the northeast corner of this survey, from which a pin oak eight inches in diameter bears north eighty degrees and fifteen minutes west, one hundred seventy-one links distant, and a cotton-wood twelve inches in diameter bears south six degrees west, sixty links distant; thence north sixty degrees and thirty minutes west with the southern boundary of the Antoine Bacane survey one hundred and eighteen chains and three
537 and three-fourth links to a point in the southeast boundary of Auguste Dodier's survey, numbered four hundred and twenty-two, the southwest corner of the Antoine Bacane survey and the northwest corner of this survey, from which a red oak five inches in diameter bears south sixty-seven degrees and forty-five minutes west, one hundred and forty links distant;

Thence south twenty-nine degrees and thirty minutes west, with the southeast boundary of the Auguste Dodier survey, four chains and thirty and a half links to a stone in the northern boundary of survey numbered one thousand two hundred and sixty-one, in the name of John Watkins, under Richlet Verdon, the south corner of the Auguste Dodier survey and the southwest corner of this survey;

Thence south sixty degrees and thirty minutes east, with the northern boundary of survey numbered one thousand two hundred and sixty-one, one hundred and eighteen chains and four links to a stone in the western boundary of survey numbered six hundred and fifty-eight, the northeast corner of survey numbered one thousand two hundred and sixty-one and the southeast corner of this survey, from which a cedar post bears north seventy-nine degrees and fifteen minutes east, six and a quarter links distant, and a pin oak four inches in diameter bears south thirty-eight degrees and forty-five minutes west, twenty-nine and three-fourth links distant, and a pin oak five inches in diameter bears south thirteen degrees and thirty minutes east, thirty-two links distant;

Thence north twenty-nine degrees and thirty minutes east, with the

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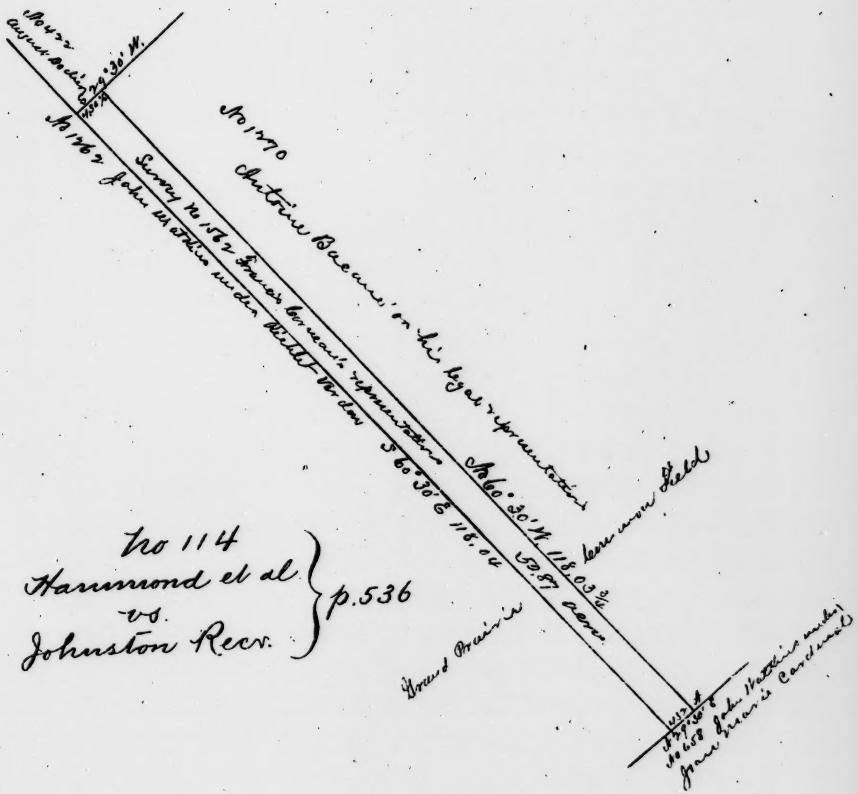

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western boundary of survey numbered six hundred and fifty-eight, four chains and thirty-two links, to the beginning corner.

538 Office of the surveyor general for Illinois and Missouri.

ST. LOUIS, *December 7th*, 1860.

The foregoing plat and description of survey numbered one thousand five hundred and sixty-two are approved as recorded on pages three hundred and eighty-nine and three hundred and ninety of this book.

JOHN LOUGHBOROUGH,
Surveyor General.

(NOTE.)—A certified copy of the plat and description of survey No. 1562 was transmitted to the recorder of land titles on the 28th June, 1862.

STATE OF MISSOURI, OFFICE OF REGISTER OF LANDS.

I, Robert McCulloch, register of lands for the State of Missouri, do hereby certify the annexed and foregoing to be a correct copy of the plat and field-notes of the survey of survey No. 1562, in the name of Francis Corneau's representatives, as the same appears of record in Book F, pages 389 and 390, of record of private surveys now on file in my office.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of office of the register of lands, at the city of Jefferson, this 17th day of August, 1885.

ROBERT McCULLOCH,
Register of Lands.

We next offer survey 1256, in the name of the Widow Hebart.

Survey No. 1256.

Plat and description of the survey of a lot of one hundred and twenty arpens, equal to one hundred and two acres and nine-
539 hundredths of an acre, of land situate in the Grand Prairie common field of St. Louis, in township forty-five north of the base line, range seven east of the fifth principal meridian, in the State of Missouri, executed by Jos. C. Brown, deputy surveyor, in the month of September, eighteen hundred and thirty-eight, under his contract with the surveyor general for Illinois and Missouri, dated the fifteenth of September, eighteen hundred and thirty-five, this being the lot of three by forty arpens granted to Veuve Hebart on the 18th July, 1769, by St. Ange and Labuxiere, official authorities for the post of St. Louis, in the province of Upper Louisiana, as bounded on one side by Guillame Bizet and on the other by Tayon. See Livre Terrien No. 1, folio 28. It was surveyed by Martin Duralde, in the years 1770, 1771, or 1772, to the amount of 3 by 40 arpens, bounded on one side by the land of Bizet and on the other by Paul Kiercereau, as certified by him on the 23rd March, 1772. See Livre Terrien No. 2, p's 2, 58, 59, 67, & 68. And it was confirmed to Widow Hebert on the 1st October, 1811, as per the

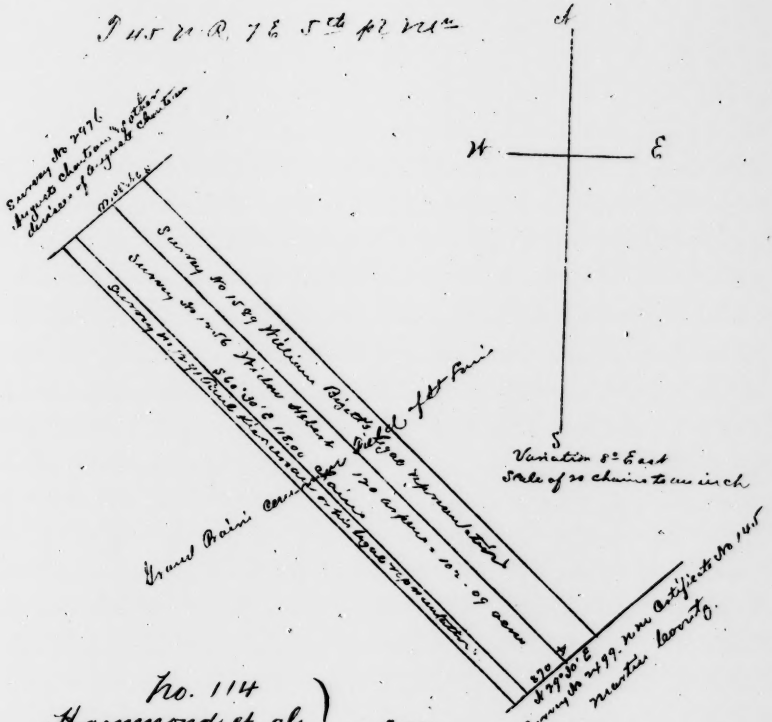
provisions of the 2d section of the act of Congress approved on the 3rd March, 1807, entitled "An act respecting claims to land in the territories of Orleans and Louisiana" by the board of commissioners appointed under the 5th section of the act of Congress approved on the 2d March, 1805, entitled "An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana," for which confirmation certificate No. 1256 was issued by the said board on same day, to be surveyed in conformity with the survey recorded in Livre Terrien No. 2, page 58. See commissioners' minutes, Book No. 1, page 521, & Book No. 5, page 347; also Am. State Papers, vol. 2, page 601. It having also been embraced within the report of Frederick Bates, recorder of land titles, of the 2d February, 1816, to the Commissioner of the General Land Office, was again confirmed by the
540 act of Congress of the 29th April, 1816, entitled "An act for the confirmation of certain claims to land within the western district of the State of Louisiana and in the Territory of Missouri" to Widow Hebert's representatives with reference to Livre Terrien No. 1, page 28. See Bates' Decisions, page 8, and American State Papers, vol. 3, page 279. And under the act of Congress of the 26th May, 1824, entitled "An act supplementary to an act passed on the thirtieth day of June, one thousand eight hundred and twelve, entitled "An act making further provisions for settling the claims to land in the Territory of Missouri," a lot was proven by the legal representatives of Widow Hebert, before the United States recorder of land titles for Missouri, on the 25th November, 1825, as follows, to wit: A common field lot in the Big prairie of two and a half arpents in front by forty arpents in depth, bounded north by William Bizette, south by Paul Kiereereau, east & west by vacant land, referring also to Livre Terrien, without numbers of book and page. See Hunt's Minutes No. 3, page 95, and his list of abstracts, No. 1115.

(Here follows diagram marked p. 541.)

541 *Description.*

Begin at a limestone eighteen inches long, fifteen inches wide, and three inches thick, marked with a cross on top and set on the southea-tern boundary line of the Grande Prairie common field, and a line of the survey in the name of Martin Cootz, numbered two thousand four hundred and ninety-nine, the easterly corner of this survey and southerly corner of the lot of William Bizette's legal representatives, survey number one thousand five hundred and eighty-nine—

Thence north sixty degrees and thirty minutes west, with the northe-stern boundary of this survey and southwestern boundary of the survey of William Bizette, at one hundred eighteen chains and four links a stone sixteen inches long, fourteen inches
542 wide, and three and a half inches thick, marked with a cross on the top and set on the northwestern boundary of the Grande Prairie field, and a line of the survey in the name of



No. 114
Hammond et al
vs.
Johnston Recr.
} p 541

Auguste Chouteau and his devisees, numbered two thousand nine hundred and seventy-six, the northerly corner of this survey and westerly corner of William Bizette's survey; thence south twenty-nine degrees and thirty minutes west, with the northwestern boundary of this survey and Auguste Chouteau's said line, at eight chains sixty-six and a half links a limestone eighteen inches long, twelve inches wide, and three and a half inches thick, the westerly corner of this survey and northerly corner of the lot of Paul Kiercereau, survey number one thousand two hundred ninety-one; thence south sixty degrees and thirty minutes east with the southwestern boundary of this survey and northeastern boundary of the survey of Paul Kiercereau, at one hundred and eighteen chains a stone on the southeastern boundary line of the Grande Prairie field and a line of Martin Coontz's survey, the southerly corner of this lot and easterly corner of the lot of Paul Kiercereau; thence north twenty-nine degrees and thirty minutes east, with the southeastern boundary of this survey and a line of the survey of Martin Coontz, at eight chains and seventy links the beginning corner.

Office of the surveyor general for Illinois and Missouri.

ST. LOUIS, *April 29th*, 1851.

The foregoing record of the plat and description of survey number one thousand two hundred and fifty-six of the general series of private claims in Missouri has been examined and hereby approved.

M. LEWIS CLARK,
Surveyor General.

A copy of the foregoing record of survey No. 1256 was returned to A. Renard, U. S. recorder of land titles, on 29th April, 1851, for his action thereon.

543 STATE OF MISSOURI,
OFFICE OF REGISTER — LANDS.

I, Robert McCulloch, register of lands for the State of Missouri, do hereby certify the annexed and foregoing to be a correct copy of the plat and field-notes of the survey of survey No. 1256 in the name of Widow Hebert, as the same appears of record in Book E, page 287, of record of private surveys now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of office of the register of lands, at the city of Jefferson, this 17th day of August, 1885.

[SEAL.] ROB'T McCULLOCH.

Testimony of Mr. JEWETT was then sworn as a witness on behalf of the plaintiff:

Mr. HENDERSON: What do you propose to do?

Mr. JEWETT: To make a statement about this old deed; to show such facts about it as to ask the court to rule you shall procure the old deed. I wish to show where it grew up and how it came to be.

Mr. HENDERSON: That I shall?

Mr. JEWETT: That you must produce. I don't produce it.

Mr. HENDERSON: You don't?

Mr. JEWETT: Of course I don't. What do you suppose I am going to put in your deed for?

Mr. HENDERSON: I certainly will not be forced to introduce that deed.

Mr. JEWETT: I don't propose to force you.

The COURT: Let the witness be sworn and you can object.

Mr. HENDERSON: Yes, sir; I object to the deed.

Mr. JEWETT: I am not putting it in, but I will make a
544 statement to compell you to put it in or else to go without it, just as you please.

Mr. HENDERSON: Oh, I thought you would give me the privilege.

Mr. JEWETT: And I say this, that I never saw or heard of the original deed of Sheriff Walker to Relf and Chew until we were in the midst of a trial before Judge Jones in 1875, I think that was. I didn't suppose the thing was in existence. After we had got through our chain of title they were putting in theirs. Hill and Casselberry were for the defendants. It was in the case of Hammond against Coleman. Mr. Collins, I think, was there; also Levin Baker, the defendant in that suit, was there as a witness and during the trial, all that time. The first thing I saw was somebody handed up to Mr. Hill a deed. I think it was Mr. Casselberry. Mr. Hill says, "Here." He had offered then the certified copy of the Walker deed, which we had no doubt but what was all right then, but Mr. Hill, before he had got half way through offering it, says, "I have the original deed here."

Mr. MORRISON: Casselberry says so?

Mr. JEWETT: Hill was the first man that said it. I would not say Casselberry said it. I recollect distinctly Hill saying it and handing it towards Judge Jones first—the original sheriff's deed, he said—and Morrison says, Let me see it, Mr. Hill.

Defendant's counsel objected.

The COURT: I don't think the details are important. You may state that you first saw the deed and they produced it.

Mr. HENDERSON: Who are they?

The COURT: I say the conversation between Judge Jones and Mr. Hill is not pertinent.

WITNESS: Very well, I can make it brief, your honor. The original was handed by Hill, as attorney for the defendants, towards Judge Jones.

545 Mr. HENDERSON: What case was that in?

WITNESS: Hammond against Coleman.

Mr. HENDERSON: Well, that is not this case.

WITNESS: No, sir; not this case; and Morrison took it in his possession and was about handing it back. I said, "Let me see it," and it was handed to me and I examined it, and not finding a seal on it I made the objection that there was no seal on that deed, and then came up the discussion; and, after a good deal of discussion, Judge Jones took that deed and examined it. He, Judge Jones, says,

"There don't appear to be any seal on it," and, for the time being, rejected it. Then we went into expert testimony in that case—you will find it in the record—and we put experts on the stand to prove there never had been any seal on that deed by the looks of it, and the result was, after considerable expert testimony, Judge Jones rejected the deed and it was not put into the case.

Mr. HENDERSON: I do not think it is hardly fair to be testifying as to what the rulings of the court were on the subject.

The COURT: I do not think it important, except to show that the deed was produced.

Mr. JEWETT: By your party.

Mr. HENDERSON: By my party?

Mr. JEWETT: Well, I will trace it to you. Then the deed was handed back to the attorneys for the defendant in this case and I never saw it again till there was another trial in one of these cases before Judge Lindley—I think it was the first time—and the same process was gone through again. They refused to produce the deed. We stated the fact in reference to its being produced in the lower court and having gone into their hands as the original deed, and Judge Lindley ruled that they must put it in or else not put in the copy, and they did put it in; produced it again and put it
546 into the trial—the original deed—and we went through the same expert testimony again before Judge Lindley. Then, in the next trial, it was then, I think, put into the care of the clerk. I think it was the first time put in the care of the clerk of the court. I insisted it should go into the possession of the clerk of the court. Then the same process was gone through when we tried the case before Judge Adams. They objected to producing the deed and we insisted they should. We stated the facts and the court ordered them to produce it and they produced it in the trial before Judge Adams in one of these Hammond cases. I think there were two or three cases on trial before Judge Adams at the same time, and it was produced there by Mr. Hill, and Mr. Collins, I guess, was with him in all these cases. At any rate, it came from their side several times. After that trial it was ordered to the clerk's hands again. I can't swear I saw it go into the clerk's hands, but I know it was ordered to the clerk's hands, and then, I think, the next time—it seems to me we produced that twice before Judge Lindley.

Mr. SMITH: We did.

WITNESS: I think we had two separate trials before Judge Lindley and I know it has been produced every single trial that we have had before this one, and I think that we have had—Judge Jones is one, Judge Lindley is two, and Judge Adams makes four; and then the next time was this before Judge Wickham, when we tried this to-, about two years ago.

Mr. HENDERSON: I didn't produce it—you produced it.

Mr. JEWETT: I say I didn't produce it.

Mr. HENDERSON: You do?

Mr. JEWETT: I say so, and will tell you if you will not contradict me. You may contradict me on the stand as much as you please. After I got through you offered this copy.

Mr. HENDERSON: You are most insulting.

547 Mr. JEWETT: And I objected and stated to the court the original deed was in the hands of the clerk of the court.

Mr. HENDERSON: He handed it to you and you handed it to me.

Mr. JEWETT: I wouldn't say it did not pass through my hands.

Mr. HENDERSON: Why do you contradict me, then?

Mr. JEWETT: If you will wait till I get through with my testimony you may go on the stand and swear.

The COURT: You objected.

Mr. JEWETT: I objected, and after considerable discussion Judge Wickham ruled that you should not put in the copy but the original, and I said no doubt, at the time, the deed was in the possession of the clerk. Now, I am not prepared to say that I didn't tell the clerk to bring it up into the court, so I could point it out to the court, in the hands of the clerk, where he could get it. I think very likely I did do that, but I don't really remember whether I did that or not and I don't care whether I did or not. It's of no consequence. The clerk, I think, produced it in court and Judge Wickham ruled that you should not use the copy, and you then put in the original yourself. I didn't put it in the case. That I might have passed it from the clerk to you—I wouldn't say whether I did or not—but I didn't offer it as my evidence. That is what I mean when I say I didn't produce it, if I did it at all. You produced it and put it in after Judge Wickham ruled that you should not put in the copy. You put in the deed and then we put in our expert testimony to show the deed hadn't any proper seal, and after we were through with the deed, according to my recollection, the clerk was instructed to take charge of the deed, and I haven't seen the deed from that day to this—the deed that you put in the case. I suppose the clerk has got it and that's the last I know of the deed. It was returned to the clerk, according to my recollection, at the time of that trial. Whether the clerk has it now or has had it since

548 I don't know. That's about all I know about it. Now, I understand, the clerk may answer whether he has it. I have now told the clerk to hunt up that deed to see if he can find it and produce it in court, and I shall call on the clerk by and by, and that is my testimony. If you want to ask me any questions I am ready to answer.

The COURT: Have you anything more?

Mr. JEWETT: I have nothing more.

Mr. HENDERSON: We certainly refrain from any cross-examination of this witness.

Mr. JEWETT: I think you might as well, General. If you can change that state of facts you are welcome to.

Mr. HENDERSON: Well, *cui bono*, what are you going to do?

Mr. JEWETT: I am going to ask Mr. Smith to take the stand.

Plaintiff then called *testimony of* E. C. SMITH, who, being duly sworn, testified as follows:

Direct examination by Mr. JEWETT:

1 Q. I will ask you to state what you remember about the last trial of this case before Judge Wickham about the production of that old deed.

The COURT: It seems to be a very plain matter. The point is now whether there is such a deed in existence.

Mr. JEWETT: No; I wish to prove by Mr. Smith what I state is the fact that that old deed was produced at the trial.

Mr. HENDERSON: Judge Wickham's decision is not binding.

Mr. JEWETT: Not at all. I only wish to prove Judge Wickham's ruling that they should not put in the copy, and that the original was produced and put in the case by Mr. Henderson.

549 The COURT (to the witness): Well, go on and state.

WITNESS: I will state that the deed claimed to be the original sheriff's deed was produced at the trial before Judge Wickham and offered by the defendants.

2 Q. Was it put into the case?

A. It was put in the case; yes, sir.

3 Q. Then was their testimony put in also in reference to whether there was or not a seal on it?

A. There was various testimony; I was myself put on the stand as to the first produce of the deed.

The COURT: I don't think that is proper; the question is where is it now?

Mr. JEWETT: Very well; I will try to find out for your honor where it is now. (To Mr. Henderson:) Do you want to cross-examine?

Mr. HENDERSON: Not at all.

Testimony of plaintiff then called as a witness AUGUSTE L. PRIEST, who, being duly sworn, testified as follows:

Direct examination by Mr. JEWETT:

1 Q. Were you a clerk under Judge Wickham at the time this case was tried formerly?

A. I was deputy in his room; yes, sir.

2 Q. Did you see an old deed, called a sheriff's deed, produced at that time?

A. I don't recollect whether I did or not.

3 Q. Have you got such an old deed now in your possession?

A. I have an old deed in my hands; I don't know what it is.

4 Q. Where did you get it?

A. It was brought to me by one of the clerks upstairs.

5 Q. Did you see it taken from the safe or not?

A. No, sir; I did not.

6 Q. One of the deputy clerks brought it to you, did they?

A. Yes, sir.

550 7 Q. Will you produce it to the court and let the court see what it is?

A. Yes, sir. (Deed produced.)

Testimony of E. C. Smith Resumed.

Examination of Mr. SMITH resumed:

Mr. JEWETT: I will ask that Mr. Smith be allowed to look at that deed and see whether he recognizes it as the deed put in by General Henderson at the former trial of this case.

(Witness examines the deed and says:)

A. Yes, sir; I do recognize it.

8 Q. As the deed put in by General Henderson in the former trial of this case?

A. Yes, sir.

Cross-examination by Mr. HENDERSON:

9 X Q. Where did that deed come from when I introduced it?

A. It came from the clerk of the court.

10 X Q. Had it been impounded?

A. I don't know exactly what you imply by that. It had been placed in charge of the clerk of the court.

11 X Q. Didn't Mr. Jewett state the deed had been impounded?

A. I understood him to say so.

12 X Q. Didn't I offer a copy of record in that case?

A. Yes, sir.

13 X Q. Did not Judge Wickham refuse to admit it on the statement of Mr. Jewett that the original deed was impounded with the clerk?

A. So I understood.

14 X Q. Was not that the ground on which he refused to receive the copy?

A. On account of the original being in existence.

15 X Q. And that was made on the assurance of Mr. Jewett?

A. I think so.

16 X Q. And the clerk then produced it?

A. Yes, sir; I think so.

17 X Q. And handed it to Mr. Jewett?

A. That I wouldn't say.

551 18 X Q. Who handed it to me?

A. I don't recollect.

19 X Q. It was handed to me by somebody?

A. Yes, sir.

20 X Q. On the assurance of Mr. Jewett that that was the original sheriff's deed. Didn't he so state to the court?

A. He said it had been produced to the court and recognized and claimed by the attorneys for the defendants as the original deed.

21 X Q. Did I then ask him if I refused to introduce that deed, which was then present, whether he would consider my title made out on the record, and didn't he answer in the negative and say no?

A. I don't recollect that, sir.

22 X Q. You don't recollect that declaration of the court?

A. No; I do not.

23 X Q. Didn't I at first refuse to introduce it until some ruling of the court was had?

A. I don't remember that.

24 X Q. Didn't I state I had never seen the deed and didn't believe it to be the original deed?

A. No, sir; I don't remember that.

Counsel for the plaintiff objected.

The COURT: It goes to his memory.

WITNESS: I will not say you did not, but I do not remember it.

25 X Q. Don't you remember my asking the court if I refused to introduce that deed and relied on the record whether he would consider any proper title made out on my side?

A. I don't remember.

26 X Q. You don't remember the court saying that he would not so consider it?

A. I don't remember.

Mr. JEWETT: That is all I wish to ask.

Mr. HENDERSON: What are you going to do?

Mr. JEWETT: I shall ask the court at the proper time to rule out the copy of this deed.

Mr. HENDERSON: You are now through, are you?

Mr. JEWETT: If you don't offer that deed I shall stop here.

Mr. HENDERSON: I don't offer it.

552 Mr. JEWETT: Very well. The clerk will be good enough to keep that deed in the possession of the clerk.

Mr. HENDERSON: Impound it again.

Mr. JEWETT: Of course, we will.

The COURT: I don't see how I can order parties to put in any evidence.

Mr. JEWETT: I don't ask you to. I only say I shall ask the court that they can't use a certified copy when the original is before the court.

The COURT: I will hear you on that when you come to argue the case, and decide it.

Mr. HENDERSON: I will stand on the record.

The COURT: If I rule this copy out there is no deed in at all.

Mr. HENDERSON: None at all, and we don't want any in.

Mr. JEWETT: I am glad you don't. I have some papers which I want to put in. I will state to the court what they are, and if before we get through I can find them I will put them in. They are nothing but what relates to the character of this map X.

Mr. JEWETT: The school board some years ago made application to the Land Office at Washington to extend the outboundary lines and to give them more ground.

The COURT: You wish to put the correspondence in in reference to that?

Mr. JEWETT: Yes, sir.

The COURT (to General Henderson): You agree to that, do you?

Mr. HENDERSON: I don't object to it. I don't know what the correspondence is, and I would like to have the opportunity to look at the correspondence.

Mr. JEWETT: Certain.

553 *Correspondence Between School Board & Land Office.*

ST. LOUIS, *Dec.* 23, 1853.

To the Hon'ble John Wilson, Commissioner of the General Land Office, Washington, D. C.:

SIR: In forwarding the enclosed memorial from the board of public schools I have to apologise for furnishing the counsellor's report from newspaper print, time not allowing of copying, and perhaps it will be more easily read. The board have but lately become aware of the real position of this outboundary, and that it is said the present X map has not been furnished to your department until August last, and by parties adverse to the board or for different purposes, and are desirous to lay before you intimation that fuller facts are necessary, and local information, which will require time to place it in its proper shape. The secretary has omitted to furnish me with plats and such memoranda as may be necessary to make the counsellor's report plain; and I will take an early opportunity to lay these before you, and in meantime beg leave to subscribe myself,

Resp'y, your ob't serv't, CHAS. L. TUCKER.

Memorial of the Board of President & Directors of the St. Louis Public Schools to the Commissioner of the General — Office.

SIR: The subject of the outboundary survey of the town or village of St. Louis required to be made under the 1st section of the act of Congress of the 13th of June, 1812, having been brought to the attention of this board, and particularly with reference to a certain plat of survey, dated the 8th day of December, 1840, approved by Wm. Milburn, surveyor general of Illinois and Missouri, and purporting to be a survey of the outboundary lines of the town or village of St. Louis in conformity to said act of Congress, a copy of which, as the board are informed, was transmitted to your
554 office by the surveyor general of Illinois & Missouri on the 8th day of August last; and the board being advised that said survey is in some respects erroneous—that is to say, that the western line thereof, between a point in said line at the southeast corner of the Prairie des Noyers common fields and a point in said line at the northwest corner of the St. Louis prairie common fields is erroneous, and that said line between those two points ought to be so run, in a continuous line, as to follow the southern line of the Prairie des Noyers common fields to the southwest corner thereof, and thence following the general course of the western lines of the Prairie des Noyers, Cul-de-Sac, and Grande Prairie common fields, and going round so as to include them to the northeast corner of

the Grande Prairie common fields, and thence following the lines of survey No. 658 of the lot to John Watkins under I. M. Cardinal and going to northward around it so as to include said lot to close at the other point aforesaid, viz., at the northwest corner of the St. Louis prairie common field, and thus, in conformity with the said act of Congress, to be so run as to include the outlots, common field lots, and commons adjoining and belonging to the said town or village of St. Louis—they do therefore respectfully request that the Commissioner of the General Land Office will examine the said survey and direct the surveyor general of Illinois and Missouri to proceed immediately to correct the said western line thereof, and to run the same in a continuous line so as to include the Prairie des Noyers, Cul-de-Sac, and Grande Prairie common fields, and the outlot or common-field lot aforesaid of Watkins under Cardinal, as above indicated, the said survey being, it is believed, in other respects correct; and if the Commissioner shall be of opinion that he has not sufficient information in his office on the subject to enable him to act advisedly in the matter, the board further request that
555 this memorial be referred to the surveyor general at St. Louis, with instructions to proceed at once to give notice to all concerned, and take evidence and hear argument until a certain day touching the matter of this memorial, and that he then report forthwith the evidence taken and his decision thereon to your office for the final action of the Commissioner, or such other instructions as the case may require.

By order of the board, Dec. 14th, 1853.

Respectfully,

[L. S.] CHAS. L. TUCKER, *President.*

Attest:

JOHN H. TICE, *Secretary.*

To Hon. John Wilson, Commissioner of the General Land Office, Washington city, D. C.

In the Matter of the Application of the board of St. Louis public schools for an extension of the outboundary survey of St. Louis.

John Wilson, Esq., Commissioner of the General Land Office of the United States.

SIR: I do not deem it necessary to trouble you with any further argument at length on this subject. I could say little more than what is contained in the printed opinion or report already submitted, and I will content myself with calling your attention to a few points in reply to the printed argument of Mr. McPherson.

1. It is asserted in that argument that the present outboundary survey was made on the application of Archibald Gamble, Esq., as agent of the board of public schools, and that the survey so made has been acquiesced in for thirteen years. There is no evidence, so far as I have been able to ascertain, that either the board or their agent ever specified the present survey as the outboundary which they desire to have established. On the contrary, they have always

claimed that this outboundary survey should include the
556 other common fields at St. Louis, nearly as now asked for.
Mr. Gamble was appointed agent merely for the purpose of prosecuting the claim of the schools to the particular lots within the city of St. Louis which are the subject of the correspondence between him and the Commissioner and surveyor general. Nor has the board ever acquiesced in the present line on the western side further than that they have made use of the survey of 1840 in the courts in the prosecution of their rights to the lots which were assigned to the schools within the outboundary as so run. As a matter of law, the outboundary survey required by the act of 1812 cannot be made to depend upon any act or acquiescence of the board of public schools nor of any private individual, and, as a matter of fact, there has been no such acquiescence on the part of the board in the present survey as could warrant any portion of the community in assuming that they intended, so far as they were concerned, to abide finally by that survey. The whole proceedings of the board and their agents hitherto have been confirmed to the particular lots in question in the applications which have been made for assignments of lots to the schools, and the entire correspondence with the Commissioner concerns those lots only. The question where the outboundary should be finally established was not decided by the Commissioner, nor does it seem to have been considered further than to ascertain that those lots would fall within any correct outboundary that might be run.

2. The decision of the supreme court of Missouri.

On a careful examination of the cases referred to in my report and in Mr. McPherson's argument, it will clearly appear that it has never been decided by the supreme court of Missouri that this outboundary survey of 1840 was a correct survey and included all that the act of Congress of the 13th of June, 1812, required to be included. All the cases arose upon lots situated within this
557 outboundary of 1840. The courts simply held it to be *prima facie* evidence for the schools as to lots situated within it; and when the defendants contested the validity of the survey as not having been correctly run and as not containing all that was to be included, the court told them that the point was immaterial to the decision of those cases so long as it appeared that the lot in question was situated within any correct outboundary. The supreme court of Missouri has never had any occasion to decide upon this question of the extent to be given to the outboundary, but it will appear to be very evident from the cases mentioned that the court did not consider the outboundary of 1840 to have been run or constructed as the act of Congress required. The points made by counsel in their briefs and arguments of cases amount to nothing further than as they are sustained by the decision of the court, and it is unfair to the gentlemen named in the argument of Mr. McPherson to cite the points made in their briefs as evidence of their professional opinions on the question here involved.

3. The attention of the Commissioner is particularly called to the case of Kissel *v.* The Public Schools (15 Mo. Reps., 553), in which it

is said that this outboundary required by the act of 1812 was not a survey of any man's land, but a survey of a municipal boundary by the Government, and that when made it did not of itself affect any man's title; that if he had any title to land before the survey that title would not be affected merely by being included within the outboundary survey, and accordingly if any New Madrid title should be disturbed by an extension of this survey it would be because the title never had a legal foundation.

4. If the interests of claimants under New Madrid titles, or of any other class of claimants, are to be considered in determining what outboundary the law requires to be run, it is submitted that these private interests are by no means all on one side. What will
558 be the condition of the owners of common-field lots in the Prairie des Noyers, Cul-de-Sac, and Grand Prairie common fields if it should be decided by the Commissioner that these common fields are not to be included in the outboundary survey of the Spanish village of St. Louis; that they had not adjoined and belonged to the village as a part of the commune? If this be true, then these common-field lots were not confirmed by the act of 13th June, 1812, and all these titles under that act and the act of 26th May, 1824, supplementary thereto, would fail; but these titles have been adjudged by the supreme court of Missouri to be valid under these acts in effect; that these common fields are situated within the outboundary line which the act of 13th June, 1812, required to be run. (Page *v.* Scheibel, 11 Mo. Reps., 167; Harrison *v.* Page, 16 Mo. R., 182.)

5. It is deemed proper to observe that there may be some individuals interested in lots lying within the present outboundary line who are seeking to have this outboundary survey wholly set aside and an entirely new one made in such a manner as not to include some lots which have already been assigned to the schools and adjudged by the supreme court to have been properly included. As to this matter I consider it unnecessary to say more than to call your attention to that portion of my printed report which speaks of the eastern line of this outboundary survey, trusting that you will be fully satisfied that that portion of the survey is correct enough. It is hoped also that you will take care to observe that the application of the board of public schools is only for a correction of the western line of this survey of 1840 between the two points therein named, and it is the desire of the board, if not inconsistent with your own views of official duty, that any instructions which may be given to the surveyor general on the subject may confine his action to that portion of the line.

6. In conclusion, allow me to suggest that it would be best
559 on the whole for the interests of all parties concerned that this outboundary should be finally established in strict accordance with the requirement of the law, as it is believed, nearly, if not exactly, as asked for; that the whole remainder of the quantity of one-twentieth should be designated and set apart to the schools as soon as practicable, and that in this way only will it be possible

speedily to put an end to doubt and litigation concerning the titles to these lands.

Respectfully, your ob't serv't,

NATH'L HOLMES,
Counsellor of the Board of St. Louis Public Schools.

Washington, April 10th, 1854.

GENERAL LAND OFFICE, *April* 26, 1854.

John Loughborough, Esq., surveyor general, St. Louis, Missouri.

SIR: In reference to the question which has been raised respecting the survey of the outboundary of St. Louis under the act of 13 June, 1812, as treated of in your annual report dated the 28th Oct. last (printed with the Commissioner's annual report made at the present session, pages 68, 71, 72, 73, 74, 75); the following have since been received from you, viz:

1st. Your communication of the 22nd December last, enclosing copy of an opinion given by the attorney for the board of public schools relative to the survey of the outboundary, which you say "probably presents the case substantially as it will be made by the application when filed."

2d. Your letter of the 15th February last, enclosing "some article which appeared in the city papers relative to school lands in St. Louis."

560 3d. Letter, dated Dec'r 23d, 1853, from Charles L. Tucker, Esq., accompanied by the memorial from the board of public schools relative to the outboundary survey of St. Louis.

4th. Letter, dated Jan'y 21st, 1854, from Archibald Gamble, Esq., accompanied by a map respecting the outboundary.

5th. Letter, dated March 22d, 1854, from Wm. M. McPherson, Esq., relative to the application of the board of public schools for an extension of the outboundary survey of St. Louis, accompanied by an article lately published in the St. Louis Republican and a paper containing some interrogatories propounded to Gen'l Milburn, with his answers thereto, dated March 9th, 1854, in which, among matters, he states as follows: "The outboundary as designated on the plat made and approved by me includes all the vacant lots, outlots, and common-field lots contemplated by the act of the 13th June, 1812, according to the expressed belief of the board of public schools at the time said plat was approved; and it includes all the vacant land which I would with certainty undertake to sustain before the judicial tribunals of the country. A speculative boundary including a greater quantity of vacant land might have been experimented upon, but the school board was unwilling to risk its chance of success with such a boundary in the important suits which were then, I believe, pending and others in immediate contemplation."

4th. A copy of the plat of survey referred to was furnished the board of public schools whilst I was in office, and there was no objection made to the boundary therein designated by the said board.

6th. Communication, dated April 10th, 1854, from Nathaniel Holmes, counsellor of the board of public schools, in the matter of the application of the board of St. Louis public schools for an extension of the outboundary and calling the Commissioner's attention to certain points in reply to Mr. McPherson.

561 7th. Letter, dated April 8th, 1854, received April 14th, from Mr. McPherson. When this subject was first brought to my notice in your annual report I expressed the views of this office in regard to it in a communication to you of the 28th November last, and as having a bearing upon a kindred matter addressed you further on the 23rd Feb'y last in reply to your communications. The matter, it appears, was properly before Surveyor General Milburn in 1840. He then made out, examined, and approved, under date 8th December, 1840, a plat and description, marked X, of the survey of the outboundary lines of the town (now city) of St. Louis, in the Territory (now State) of Missouri, as it stood incorporated on the 13th day of June, 1812, including the outlots, common-field lots of the common field of St. Louis, and the common thereto belonging, made in pursuance of the 1st section of the act of Congress approved the 13th of June, 1812, entitled "An act making further provision for settling the claims to land in the Territory of Missouri." You will observe under the 5th head in the foregoing what he states in regard to it.

In the memorial of the president of the board the Commissioner of the General Land Office is requested to examine the said survey and direct the surveyor general of Illinois and Missouri to proceed immediately to correct the said western line thereof and to run the same in a continuous line so as to include the Prairie des Noyers, Cul-de-Sac, and Grande Prairie common fields, and the outlot or common-field lot aforesaid of Watkins under Cardinal, as above indicated, the said survey being, it is believed, in other respects correct.

In the proceedings had by Surveyor General Milburn his duty, in the opinion of this office, was discharged under the act of 1812, respecting the survey of the outboundary of St. Louis and the surveyor general's authority is consequently exhausted in the premises. The

562 outboundary, it is shown by Gen'l Milburn's statement, was established in accordance with the views of the school commissioners. They have acquiesced in it for many years, and private rights have attached under and since that survey. The United States and the city of St. Louis are, in my opinion, concluded by the action of Surveyor General Milburn, and both are estopped from making any change in the outboundary aforesaid. Upon an examination, then, of the papers and proceedings before us I am satisfied that they will not warrant us in giving such instructions as are now applied for, and that the surveyor general is not authorized to alter or disturb the existing outboundaries as exhibited on the aforesaid plat marked X, approved by Surveyor General Milburn on the 8th December, 1840, a transcript of which was transmitted to this office with your letter of the 8th August last. You will be

pleased to make the purport of the foregoing known to Charles L. Tucker, Esq., Archibald Gamble, and all others concerned.

Very respectfully, your ob't servant,

JOHN WILSON,
Commissioner.

WASHINGTON CITY, *April* 26, 1854.

SIR: In the case of the application of the St. Louis board of public schools, asking for an order of survey extending the outboundary of the town of St. Louis on the west so as to include the common-field lots of the Grande prairie, Cul-de-Sac, & Prairie des Noyers, as required by the act of 13th of June, 1812, and which was submitted to your department upon the argument filed—

I learn a decision has been made and that the application has been refused. On behalf of the board of public schools I respectfully pray and appeal from your decision to the Secretary of the Interior, and that you will cause the papers to be transmitted at your earliest convenience.

Very respectfully,

N. HOLMES,
Counsellor of the B'd of Pub. Sch'l.

563 DEPARTMENT OF THE INTERIOR, *May* 2*d*, 1854.

Hon. John Wilson, Commissioner of Gen. L. Office.

SIR: I have carefully examined and considered the questions submitted, with your letter of the 27th ult., and the argument of the counsel for the board of public schools of St. Louis, Mo., in relation to the survey of the outboundary of the town of St. Louis, and am satisfied that your views in relation to this survey, as designated on the plat and description thereof, made and approved by Surveyor General Milburn Dec. 8th, 1840, are correct. Your decision adverse to the resurvey of said outboundary is therefore affirmed, and the papers enclosed in your letter above alluded to are herewith returned, in order that proper action may be taken by you in the case.

Very respectfully, your ob't serv't,

R. McCLELLAND, *Secretary.*

To the Commissioner of the General Land Office.

D. DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *March* 1, 1882.

I, N. C. McFarland, Commissioner of the General Land Office, do hereby certify that the annexed copies are true and literal exemplifications from the files and records of this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal of the United States Gen'l Land Office.]

N. C. McFARLAND,
Commissioner of General Land Office.

564 *Testimony of —— Recalled.*

Plaintiff then recalled J. L. D. MORRISON, who testified as follows:

Direct examination by Mr. JEWETT.

1 Q. Mr. Morrison, I believe you have sworn that you knew Mary A. Washington, of Georgia?

A. Yes, sir.

2 Q. When did you first see her?

A. You must excuse me for not naming the dates properly.

3 Q. About when did you first see her?

A. I guess I saw her three or four days before that deed is dated. I don't recollect when it was; seven or eight years ago; before the date of her deed to me.

4 Q. You saw her three or four days before that?

A. I think that was when I first saw her.

5 Q. Did you have a conversation with her in reference to her title in this land?

A. I did; yes, sir.

6 Q. How much did she claim at that time to own—what interest in the Hammond land as the heir of her father?

A. She claimed to own the whole of it, in fact, but I demonstrated to her after I heard the case that she only owned a fifth of it.

7 Q. Did she have any conversation with you about any arrangement that she had made once with Mr. Darby about prosecuting some suits for her for this land?

A. Never.

8 Q. What conversation did she relate to you she had in regard to the arrangement she had made with Mr. Darby in relation to prosecuting the suit?

A. Oh, before the execution of the deed she showed me
565 some letters of Mr. Darby that showed she had some arrangement with him of some kind or some correspondence with him.

9 Q. Have you those letters now that she showed you from Darby to her?

A. I have one of them, perhaps two of them; they are impounded here, some of them.

10 Q. Haven't you those letters?

A. No. sir; I have one of Darby's letters to her.

Mr. JEWETT: Here is a paper, your honor, which says on it, "Hammon against Baker. The within exhibits, one and two, referred to in the affidavits of J. L. D. Morrison, filed in the above case December 3rd, 1880, are not to be inspected by any one except on the order of the court, the clerk to as-sure himself that such order was made." Now, I believe the envelope to contain two letters of Mr. Darby's to Mrs. Washington, which I shall try to show Mrs. Washington gave to Mr. Morrison, and I ask the court to order the clerk to open them, so that Mr. Morrison may refer to them in this

testimony. Mrs. Washington undertakes to swear in her deposition that Morrison and Smith both knew before she made the deed to Morrison that she had already conveyed one undivided half of that entire survey to Darby. She swears to that effect here.

The COURT: That is the deposition offered in this case?

Mr. JEWETT: Yes, sir; and I wish to contradict her.

The COURT: Let the paper be opened.

(The papers were taken out of the envelope and handed to Mr. Jewett and Mr. Henderson).

11 Q. Will you look at those letters and see if they are the letters given to you by Mrs. Washington?

A. Yes, sir.

12 Q. Who gave you those two letters?

A. Mrs. Washington gave me those two letters and this one, too.

13 Q. They are all three letters written by Mr. Darby?

A. They all purport to be, and I believe they are all genuine.

566 14 Q. Do you know enough of Mr. Darby's writing to recognize it as his handwriting?

A. Yes, sir.

15 Q. They were all given to you by Mrs. Washington when?

A. At the time she executed that deed to me. I better make a statement to connect the thing, perhaps.

16 Q. State, then, your conversation.

A. I went there to buy Mrs. Washington's title. I had sent Mr. Smith in advance of me to find her—to find the heirs; and then after he found them and located them, as I recollect the things, I went myself and saw Mrs. Washington and perhaps some of the other heirs.

17 Q. No matter about the others. Confine yourself to Mrs. Washington.

A. Well, I saw Mrs. Washington, and of course the first question that arose between me and Mrs. Washington was whether she had ever conveyed her land or her interest to anybody—whether she had ever made a deed to any one for it. She claimed that she had not; that it was all in herself yet. I asked her repeatedly if she had ever deeded it to any one. I don't think I asked her whether she had deeded it to Mr. Darby or not; and then she showed me this letter from Darby, in February, 1874, which reads as follows: "Dear Madam: I have received your letter of the fourth instant, having received a letter some time ago asking me to send you the papers which you may have sent me appertaining to your land claims. There is not a deed or title paper among the whole, only some old letters," etc. Well, she told me she had never deeded to Mr. Darby—no, not Darby. She told me she had never deeded to anybody, and to confirm me in that she gave me this letter, which did confirm to me that she had deeded to nobody else, and I paid her $100 and took her deed, and I never heard of her deed to Mr. Darby, and was astounded when I heard of it from Mr. Smith that he had put it on record, and I then came to the recorder's office and

found the deed, and that is the first intimation in the world
567 that I had that Darby had any title.

18 Q. When you first found it what year was that?

A. Sir?

19 Q. That was after the deed of Mrs. Washington to Darby was recorded in the recorder's office here, was it?

A. Yes, sir. I would state, further, when I came home from Georgia I wrote for Mrs. Washington a form of an order on Darby to deliver me all of the title paper he had of hers, and I went to Mr. Darby and Mr. Darby gave me a bundle of old letters that were wholly useless, and he told me those were all the papers of Mrs. Washington that he had.

20 Q. You got an order from Mrs. Washington?

A. I did, but I haven't preserved it. I have a copy of it; I think it is in the deposition.

21 Q. You had a written order from Mrs. Washington?

A. Written order to Mr. Darby to surrender all her papers to me, and Darby surrendered a lot of letters, trifling things, of no value, and told me those were all he had.

22 Q. Now, in Mrs. Washington's deposition this question is asked her: "Did you tell both Mr. Morrison and Mr. Smith, before you made your contract with and executed deeds to them, that you had already made a contract with and delivered a deed to John F. Darby conveying to him the undivided one-half of all your lands in St. Louis, Missouri? A. Yes, sir; I told them both (that is, Smith and Morrison), and they know I told them; and Mr. Morrison said that made no difference; that he would take that risk; and he impressed that on my mind—that he would take that risk. I told them both of it before I executed any contract and deeds to them." I ask you now whether Mrs. Washington told you any such thing.

A. As far as I am concerned every word of it is false. Mr. Henderson ought to know it is false, because he knows I am lawyer enough not to have been such a fool as to have bought of her if she had made that statement to me.

23 Q. How long have you been in the practice of the law?

A. I am not in the practice of the law now, except——

568 24 Q. How long ago were you admitted to the bar in Illinois?

A. 37 years.

25 Q. State whether you have been in the practice of the law to some extent as a land lawyer in Illinois.

A. Yes, sir; for 25 years attended to very little else.

26 Q. Well, did you well know under the law at that time that if she had deeded to Darby and you knew it that her deed to you was good for nothing?

A. Of course I did, and I well knew, under Mr. Darby's circumstances and the intimacy which existed between him and me, that he would have deeded it to me for $100. I was — satisfied of that as that I live.

27 Q. You say you asked Mrs. Washington whether she had made a deed to anybody else?

A. I asked her whether she had ever conveyed her interest to anybody else, and told her at the same time there was no deed on record from her to anybody, and I asked her if she had ever conveyed her title or interest to anybody else, and she told me positively that she had not; told me so in her own parlor.

28 Q. If you had known she had made a deed to Darby, would you have taken her deed and given her anything for it?

A. Oh, well, if she had made a deed of her entire interest to Darby I would have thought I could have bought of Darby even cheaper than of her.

29 Q. Well, after you took this deed and before you knew of the record of this deed here was there some compromise made from which Mrs. Washington got some money?

A. Several of them.

30 Q. How much money did Mrs. Washington get, before you knew of the existence of the deed from her to Darby, out of her 15th that remained in her?

A. Well, I can't tell. I recollect $800 she got.

31 Q. That is, by compromise?

A. Money that the Charter Oak Company paid. She got a good deal of money on compromise for the one-15th that she conveyed to these people when my letters were delivered over to some of them.

569 32 Q. Who paid her that $800?

A. I paid it to her myself.

33 Q. Did you at that time know anything about the Darby deed?

A. Never dreamed of such a thing. I took compromised deeds in her name afterwards for five or six tracts of land for her 15th, and she executed a quitclaim deed to the parties with whom we compromised, and she got the benefit of that property by selling it to Mr. Wade and others.

34 Q. You recognized her then as a *bona fide* owner of one-15th down to the time you had knowledge of the record of the Darby deed, did you?

A. I never dreamed of anything else, sir; never had the slightest information from her or any other living being that she wasn't the owner except in so far as this conflicting title to her is concerned.

Cross-examination by Mr HENDERSON:

1 X Q. You say you received an order from Mrs. Washington upon Col. Darby to deliver to you the papers that he had?

A. I did, sir.

2 X Q. Do you recollect whether you drew that order in your own handwriting?

A. I did, sir.

3 X Q. Why did you do that?

A. Because I wanted to come clothed by Mrs. Washington with authority to get her papers that she had entrusted to Darby. She had conveyed to me two-thirds of her interest, and she had shown

me this letter in which Darby disclaimed having any title deed to any of the property.

Letter J. F. Darby to Mary A. Washington, Dec. 30, 1873.

ST. LOUIS, MISSOURI, 30 *December*, 1873.

Mrs. M. A. Washington, Macon, Georgia.

MY DEAR MADAM: I have received your letter of the 18th inst. in which you inform me that you tried to send the money to defray the expenses in locking up the Hot Springs titles; but that
570 the great depression of stocks and other things prevented your doing so. You say also that you do not want me to write any longer, but to sue for *of* the places and any lands belonging to you around St. Louis; that you wish me to get what I can for the Bellevale plantation, &c., &c.

My dear madam, I have made most full and ample search into all your titles here, and I find thay are all barred finally and conclusively by the statute of limitations except the title to the Hot Springs tract of land in Arkansas. As it is out of the State, I have never examined it and cannot state whether you have or have not any claim or title to that land or not. Then with regard to all the claims of land in and around to lands in St. Louis county and in the city of St. Louis—in St. Charles and in Callaway county, Missouri—without the aid of a single title paper of any sort, original or otherwise, I have spent much time and money in investigating your titles and searching to see if you had any claim or any shadow of claim to any lands in these counties that could be maintained in court and which had not been absolutely barred by limitation beyond any and all recovery. All these facts I wrote you time and again, and for all these researches, labor spent, money expended, I have never had and have never received one cent of money from you or from any other source. I do not say this complainingly, but I did expect to get some sort of title paper to some one of your claims on which to base or found an action. With regard to the Hammond tract, called the Bellevale tract in Jefferson county, your right, as you have lost your deed, which was never recorded, has been lost and barred by time. Still I am at work, and have been — by negotiation to effect a compromise and settlement, so that I can save something for you ultimately; but there is not according to my view any chance whatever to recover any one of the tracts of land, so far as I am informed, in which your father or mother ever had an interest. It would be but incurring cost, all of which I
571 regret. If you can get any one else to bring these suits I shall be satisfied to have you do so. I do not want to bring suit with no prospect of recovery.

With very great respect, JOHN F. DARBY.

Letter J. F. Darby to Mary A. Washington, Feb. 9, 1874.

ST. LOUIS, 9 *February*, 1874.

Mrs. M. A. Washington, Macon, Georgia.

DEAR MADAM: I have received your letter of the 4th inst., having received a letter some time before, asking me to send you the papers, which you may have sent me, pertaining to your land claims. There is not a deed or title paper among the whole, only some old letters, &c., all of which I will return as soon as I have time to look up the papers. I am now, and have been for some weeks, engaged in some important land suits, so that I have not time to stop and look up your papers. I have been and still am at work to try and save for you and make some money for you out of the "Bellevale" farm, in Jefferson county, Mo. I have never given up or abandoned the prosecution of that claim, or trying to make some money for you by negotiation or treaty on that claim. I am still at work at that.

With very great respect, JOHN F. DARBY.

Letter J. F. Darby to Mary A. Washington, Mar. 12, 1874.

ST. LOUIS, MISSOURI, 12 *March*, 1874.

Mrs. Mary A. Washington, Macon, Georgia.

DEAR MADAM: Some time ago you requested me to send you all the papers and letters which you had sent to me. I wrote and informed you that I had entered into negotiations for the settlement of the Jefferson county tract of land. You will recollect that I did not receive any title papers from you whatever, except
572 the copy of the deed from William Russell to Samuel Hammond, not official or certified. My old friend, James E. Yeatman, called on me with an order from you, but for ten days I was so much engaged in the trial of an ejectment suit that I could not stop to look up any papers, for which the order was given. I will, as I have informed Mr. Yeatman, hunt up such papers as I have and will deliver the same to your order. The party who claims title to the tract of land in Jefferson county, formerly claimed by Samuel Hammond, and for which you never could find or send me the original deed, I have been negotiating, arguing, and treating with and trying to compromise for more than six months. I have explained to you repeatedly before that I could maintain the suit without that original deed, because William Russell had made another deed for the same land sold to Samuel Hammond, and this latter deed had been put on the record, which carried the title, and the Hammond deed, never having been recorded, availed not and carried no title. This party has proposed to me to divide the land between you and him share and share alike, with the exception of a small piece of twenty acres, which he has sold off and has been paid for. This would give you about 200 acres, which, divided between you & myself, would give you about one hundred acres' worth—I am told about twenty-five hundred dollars. If this meets

your views, I will make out and send on to you a deed for to execute.

With great respect, JOHN F. DARBY.

4 X Q. In his disclaimer he disclaimed having any title deeds to Mrs. Washington; that's what he referred to, isn't it?

A. The letter is here and you can judge.

5 X Q. Well, that's what he says. You wanted the title deeds Darby had to this property, that had been given him by Mrs. Washington?

A. No, sir; I didn't want anything of the kind. I wanted the papers which Mrs. Washington had given to him, whatever they were.

573 6 X Q. If she had given to him any evidence or title to this land you wanted it?

A. Of course.

7 X Q. That is what was meant; that is what Darby meant by saying he had delivered to you all the title papers that he had. Isn't that the meaning?

A. He told me he had no other papers of hers except the letters he gave me, and if I had dreamed he had had a deed from her I should have interrogated her specifically about that.

8 X Q. A deed executed by Mrs. Washington to Darby certainly wasn't a paper of Mrs. Washington, was it? It belonged to Darby, didn't it?

A. It would look that way; yes.

9 X Q. Now, you say you drew that order in you- own handwriting for Mrs. Washington?

A. I did.

10 X Q. Did she sign it?

A. I think so.

11 X Q. As you drew it?

A. I think you have a copy of it. I don't recollect whether it is signed as I drew it or not. If you will let me see it I will probably recognize it.

12 X Q. Did she sign the order you drew in your own handwriting?

A. No; she may have copied it herself; I can't tell. She signed one I drew in my handwriting without looking at it.

13 X Q. Why did she copy it?

A. I don't say she copied it; I said she might.

14 X Q. The order you got for the papers on Darby was in her handwriting?

A. That I can't vouch for.

15 X Q. Didn't you tell her to copy that?

A. I think I did probably; that I don't recollect. It was either her handwriting or mine, and I brought it to Darby and he told me he had no deeds or anything else of hers, and that is all; and I came away with the old letters that he gave me of no value to anybody.

16 X Q. Where did you get the letters you have in your hand?

A. Mrs. Washington gave them to me.

17 X Q. What year?

A. At the time she made that deed.

574 18 X Q. In 1874?

A. Yes, sir.

19 X Q. You say you knew Col. Darby. He was a land lawyer, too, wasn't he?

A. I was intimately acquainted with him—a great deal better than you—for 40 years; intimately acquainted with him.

20 X Q. Col. Darby was a land lawyer?

A. Yes, sir, and a very excellent one.

21 X Q. You say you could have got this property cheaper from Col. Darby than from Mrs. Washington?

A. I didn't say I could; I said I had no doubt I could.

22 X Q. If you had known Col. Darby had had a deed of the property you think you could have bought it for $100?

A. If I had known that fact and the circumstances that he had it I think I could have bought it for $50.

23 X Q. Then Col. Darby attached very little importance to these land claims?

A. Of Mrs. Washington's title?

24 X Q. Yes.

A. I think he did. I think he had the same conceit that you have in that trial, and that he didn't think there was much in it. He never told me so, but I judge that from conversation with him.

25 X Q. Did he tell you so?

A. No, sir; I say he never did tell me so, but I judge that from conversation with him.

26 X Q. You say you went to see Mrs. Washington. She didn't come to you?

A. She came to me afterwards and got her money.

27 X Q. What money, the $100?

A. $800 and $100.

28 X Q. That is the land you secured for her under her third interest?

A. I say $100 I agreed to pay her for her lawyer.

29 X Q. You say you are a land lawyer?

A. No, sir; I didn't say that; I say I had practiced law in land matters in Illinois, but I don't profess to be a land lawyer.

30 X Q. What did I understand you to say about your having sense enough to know, if you had known of the Darby deed,

575 that you couldn't have sustained Mrs. Washington's deed—what did you mean by that?

A. I meant that if I had known Mrs. Washington had conveyed to another party I would have concluded at once, as a lawyer, the conveyance to me was inoperative.

31 X Q. But you said you wouldn't have paid her any money. What money did you mean you paid her?

A. Why, I paid her $100.

32 X Q. Not until she came here?

A. I promised to pay her, and my word is as good as my money,

and I would have paid her then if I had had the money in Georgia, but I didn't have it, I told you.

33 X Q. How long after did you pay her?

A. I can't tell.

34 X Q. Did you ever pay her any money for her use and benefit at all?

A. I paid her. Mrs. Washington told me in her parlor that she must have one hundred dollars for the debt that she owed her lawyers for services they had rendered her there—some old services, fees that she owed, and that I must pay it to her. If you want the truth in regard to it, I will state I gave her a check to her lawyers, because I was afraid to trust her with the check.

35 X Q. That is it. Now you come to it. You paid this money to her lawyers?

A. I paid it to her lawyers for Mrs. Washington under my obligation and agreement with Mrs. Washington to pay it. I paid her debt with it.

36 X Q. Now, Mrs. Washington, when you asked to get her deed, consulted lawyers whether she could make a deed or not, didn't she?

A. I never did.

37 X Q. But Mrs. Washington did?

A. Oh, that I don't know anything about. I suppose she did.

38 X Q. Didn't you promise to pay any fees which would be required to pay her attorneys in consequence of the counsel?

A. Never.

39 X Q. Didn't you know the $100 you paid to Mrs. Washington was to go to her attorneys, and that she was not to receive a cent of it?

A. She told me it was for her attorneys. She told me she
576 owed these gentlemen for services rendered some time before in other matters.

40 X Q. Who were her attorneys there—Hall and others?

A. Hall and Lofton and somebody else; I don't know who.

41 X Q. Didn't you agree with Hall and Lofton that you would pay them that $100?

A. Not for myself.

42 X Q. Didn't you have a talk with Hall about it?

A. Very likely I did. Hall was there part of the time. When she said she owed Hall and Lofton $100 I said I would pay it, but not for services rendered to me.

43 X Q. You paid it to Mrs. Washington?

A. I gave her a check.

44 X Q. To go to the attorneys?

A. Yes, sir.

45 X Q. You drew payable to the attorneys?

A. Sir?

46 X Q. You drew it payable to the attorneys?

A. That's my recollection of it.

47 X Q. You just now said——

A. I say that is my recollection. I wouldn't trust Mrs. Washington with anything now.

48 X Q. Therefore you never gave Mrs. Washington anything for this land?

A. Yes, sir; I paid her $100.

49 X Q. But you drew this check payable to her attorneys?

A. You have my explanation of it.

50 X Q. Don't you remember that check was payable to order?

A. I drew that check, if I recollect, payable to the order of her attorneys, the parties that she told me to pay it to and the parties I agreed to pay it to.

51 X Q. You made it payable to their order, not to bearer. Mrs. Washington could't have drawn it, could she?

A. I don't recollect whether she could or not. I didn't intend she should.

52 X Q. You think you accomplished it?

A. I think I did.

53 X Q. You are a land lawyer, and you profess to know, I suppose, that a check payable to order can't be drawn without
577 an endorsement, don't you? Mrs. Washington couldn't have received this money unless her attorneys endorsed it to her, could she?

A. Mrs. Washington received the money in discharge of the debt she owed, as she told me.

54 X Q. How long was it after you got this deed you gave Mrs. Washington that check?

A. I think eight or nine months, about.

55 X Q. She was up here?

A. Yes; I wrote to her to come here and get her money and then I paid her the $100. At the same time I would have given it to her at the time, but I didn't have the money.

56 X Q. Did you ever pay Mrs. Washington, by money or check, direct to herself, so that she could enjoy it, a dollar for this land?

A. I have answered that question.

57 X Q. Well, did you?

A. That $100 is all I ever paid, and I told you how I paid it, and I can't put it any plainer than that.

58 X Q. Well, then, you received from Mrs. Washington two-thirds of one-fifth of 240 acres inside of the city of St. Louis for $100, which you agreed to pay?

Counsel for the plaintiff objected.

A. Oh, I gave her what is expressed in the deed.

The COURT: He may state what he gave.

WITNESS: What do you want me to state? I gave Mrs. Washington $100 in cash. I suppose it was cash; the check never came back on me.

59 X Q. Did you give it in cash, bills, or check?

A. Check.

60 X Q. Payable to whom?

A. I have told you that four or five times.

Counsel for the defendant- objected, and the court sustained the objection.

61 X Q. You say you went to see Mrs. Washington yourself?
A. I did, sir.
62 X Q. Did you go to the other heirs down in the South or did they hunt you up?

Counsel for the plaintiff objected.
578 The court sustained the objection.

(By the COURT:)

63 X Q. Have you read this deposition of Mrs. Washington?
A. I have read a part of it; I couldn't read it through. I was so disgusted with it I couldn't read it. Mrs. Washington has no interest in this suit I suggest that as attorney of Morrison, client.

(By Mr. JEWETT:)

64 X Q. Mrs. Washington states in this deposition that she got a quantity of papers—I think she said one Sunday, according to my recollection about it—and was sitting on the sofa; that she gave you a large quantity of papers and among them was the Darby contract, if I remember aright, for you to look over, and you looked them all over and knew all about the Darby deed and contract. Is that true?
A. Not a word of truth in it. We executed a contract there one Sunday; I know I signed a paper. I forget what it is now, but I was looking at no papers then.
65 X Q. Did you ever sit there one Sunday and look over a quantity of papers on a sofa in the room or at a table?
A. That I might have done, because I recollect signing a contract there. I believe it is set out there somewhere on Sunday, and she staid out of church, she said, to accommodate me, as I wasn't a very good church member.
66 X Q. Did you see any Darby contract?
A. Never, sir.
67 X Q. I don't mean Darby deed, but a contract.
A. Never saw a Darby contract.
68 X Q. Did you see any papers showing she had made any agreement with Darby except the letters she showed?
A. That is all.
69 X Q. Did she give you all three of those letters?
A. Yes, sir.

Mr. JEWETT: I offer these letters as showing the information Morrison had of the transaction.

(By Mr. HENDERSON:)

70 X Q. Did you make a contract there on the Sabbath day with Mrs. Washington?

A. That is my recollection, that I did sign it on the Sabbath day.

579 71 X Q. Why did you do it?

A. Why did I do it? It was a very wicked thing. I don't know what it has got to do with this thing.

Testimony of —— ——, recalled. Plaintiffs then recalled as a witness E. C. SMITH, who testified as follows:

Direct examination by Mr. JEWETT:

1 Q. State when you first saw Mrs. Washington in relation to this transaction.

A. January 18th, 1874.

2 Q. Well, what did she claim to own at the time you first saw her?

A. Mrs. Washington claimed to be, to me, the sole heir of Col. Samuel Hammond, and declared that she owned all of his property in Missouri, and as proof of it she produced to me a list of land that once had been owned by Col. Hammond; that list covered at least a page and a half of legal cap, and said that for many years she had been trying to get possession of these lands and had spent a great deal of money, and that they belonged entirely to her. I asked if she had ever conveyed any of these lands, and she said she never had.

3 Q. Did you have a conversation with her about her arrangement with Mr. Darby—whether she had any?

A. I did, sir.

4 Q. State what her conversation was.

A. She said she had a contract with Mr. Darby, and would show me all the paper in relation to that contract. She didn't produce the papers. I called the next day. She didn't have the papers, she said, but she would send to Mr. Darby for them. She informed me afterwards she thought the papers were partly confidential, and that I ought not to be allowed to see them, but that the arrangement with Mr. Darby was that he was to have half of what he recovered, and he was to pay all expenses.

580 5 Q. She told you that was the arrangement.

A. She told me that was the arrangement, and I have refreshed my memory, because I have a copy of my letter in my hand that I wrote at that time.

6 Q. That is, that you wrote to Morrison?

A. That I wrote to Morrison; yes, sir.

7 Q. What did you ask her about—whether she had deeded to anybody?

A. I asked her expressly, carefully, and explicitly if she had ever sold or deeded any of her property in Missouri, and she said she had not.

8 Q. Did she ever show you a contract she had made with Darby?

A. No, sir; she never did.

9 Q. You say she avoided it?

A. She said she considered it partly confidential, and therefore I ought not to see it.

10 Q. Did she tell you it was covenant to pay one-half—to give Darby one-half—or didn't she tell you the particulars?

A. She said Darby was to have half. I wanted very much to see the contract—to see what shape it was in—and she promised me several times she would do it, but finally refused on the plea that, being partly confidential, I ought not to see it; but she said the arrangement with Darby was that he was to have one-half and pay the costs.

11 Q. Did you know at that time that you finally took the deed—that Morrison deed—that Darby abandoned the prosecution of the suit?

A. Yes, sir; and was informed by Mrs. Washington.

12 Q. Did she show you the Darby letters which she showed to Mr. Morrison—that he had abandoned the suit?

A. No, sir; she never showed me those, but she said she had recently heard from Mr. Darby, by which Mr. Darby had agreed to give up the prosecution of her suit, and wanted to have nothing further to do with the suit, on the ground, she said, that he couldn't do it without money, and she refused to furnish the money.

13 Q. Did you ask explicitly whether she had made a deed
581 to Darby—any deed?

A. I did ask her if she had made a deed to Darby, and she said she had not.

14 Q. Did you ask whether she had made a contract with Darby?

A. I did ask if she had made a contract, and she said she had made a contract by which he was to have one-half, but she never would let us see the contract to see what it contained.

15 Q. How much of that survey—what interest did she claim to own at that time—the whole or only one-fifth?

A. Mrs. Washington declared to me that she was sole heir of her father and entitled to all the property.

16 Q. When did you first find that out? Did she tell that before or after you found out there were other heirs alive?

A. She told me that after I had found out. When I went to see Mrs. Washington I knew very nearly who the representatives of the Hammond family were.

17 Q. Before you saw her you knew who they were?

A. Yes, sir.

The COURT: The deed to Morrison was a quitclaim?

Mr. JEWETT: It starts out as a quitclaim and then uses subsequent language which says she thereby intends to convey. It is not a naked quitclaim.

18 Q. Mrs. Washington swears in her deposition this: "Did you tell Mr. Smith before you entered into your contract with and executed your deed to him that you had made a deed to Mr. Darby conveying to him certain lands? A. I stated to Mr. Smith that I had made a deed and contract with Mr. Darby conveying to him half of all lands in St. Louis county, Missouri. I gave him a full statement of the facts, and that Darby was to have one-half of what

he recovered, if he secured anything, and nothing if he didn't." Now, state whether that is correct as to what she said about the deed and contract.

A. That is not correct. It is correct as far as the contract is concerned, but she declared she had never made a deed to Darby. I asked her carefully and explicitly.

582 19 Q. Did you know enough about land law—you are not a lawyer by profession are you?

A. No, sir.

20 Q. Did you know enough about land law, then, to know that is she had conveyed away that land or the half of it to any person else and you knew about — that a deed to you or to Morrison would not be good?

A. I knew that perfectly well.

21 Q. (Reads:) "Did you tell both Mr. Morrison and Mr. Smith before you made your contract with and executed your deed to that that you had already made a conveyance with and delivered a deed to John F. Darby conveying to him an undivided one-half of all the lands in St. Louis, Missouri? A. Yes, sir; I told them both, and they know I told them. Mr. Morrison said that made no difference; he would take that risk." Now, state whether she told you anything about the Darby deed or not in that interview.

A. She didn't, and never has told me or written a word to me about any deed to Darby in any way.

22 Q. When did you first have knowledge of the existence of the Darby deed?

A. On the 23rd of October, 1880, about 5 o'clock in the afternoon.

23 Q. How did you come to possess that knowledge?

A. I was walking up Fourth street. At the corner of Fourth and Olive I found Mr. Darby standing—I think leaning against a window. He had one of his boys with him. Mr. Darby and I were always on friendly terms, and I stopped to chat with him a few minutes, and he said, "Smith"——

24 Q. What was Darby's condition at that time as to being a little set up or not?

A. Well, I think Mr. Darby had taken a little too much whisky.

Mr. HENDERSON: *Nil mortuis nisi bonum.*

Mr. JEWETT: There is no harm in that; both you and Morrison go there.

WITNESS: Mr. Darby said, "Smith, how are you getting on with the Hammond matter?" *A.* I said, "Very well."

583 Says he, "How are you getting on with Mrs. Washington?" I said, "Very well." Says he, "I have got a deed from Mrs. Washington." Says I, "What, Mr. Darby?" Says he, "I have got a deed from Mrs. Washington and I will I give it to you, Smith." Well, I was nonplussed for a moment, and says I, "You have a deed from Mrs. Washington?" "Yes;" and says I, "When was it made?" "Oh," says he, "some time ago." Says I, "We will go down and get it." "No," he says; "we won't go down and get it; I am going home." Says I, "I will walk down with you, Mr. Darby." "No," said he, "I don't go; I won't

go this afternoon." "Well," says I, "I will come and get it on Monday." "Very well, very well," he says; and, after chatting about some other matters—I don't now remember what—he went away. Monday morning I saw him at the court-house. I was sitting at a table in what is called the judge's room, on the side opposite the clerk's room, with the door open, and Mr. Darby passed, and says he, "Hello, Smith." I spoke to him. Says he, "I want to see you a minute." I came out, and he asked me some question, I don't now remember what, and says I, "Are you going to the office, Mr. Darby?" And says he, "Yes." "I will go down with you," said I. So I went down with him, and I got down there and says I, "Mr. Darby, where is that Washington deed?" "Eh," he says. Says I, "Where is that Washington deed that you promised to give me?" Says he, "I won't give it to you." "Well," said I, "but you said you would on Saturday night, Mr. Darby." "Well," said he, "I won't give it to you." Says I, "Will you let me see it?" "Yes." So he produced the deed, and that's the first time I ever saw the deed.

25 Q. Well, what happened then?

A. I asked Mr. Darby what he was going to do with it. "Well," he said, he didn't know. Said he, "I think you can make something out of it, Smith." "Well," says I, "maybe I can." "Well," says he, "take it and we will divide what you can make." "No," I said, "that wouldn't do." Says I, "Suppose you sell it to me." "Very well," says he, "I will sell to you." "Well," says I, "what will you sell it for?" Well, Darby didn't know. Says he,
584 "What will you give?" Well, that wasn't the question. The question was what he would sell it for, and he finally said that he would sell it, but, if he did so, that I must give him part of what was received for it. Whatever I made out of it I was to give him part, and I was to agree to do that. I said I would do so, and he said he would sell it for $100 and make me a deed. "Well," I said, "you go and draw up the deed and I will go and get the $100." So I went out and got the $100 and brought it in in bills and handed it to him, and he took the deed and we went up before a notary and acknowledged it, and he delivered it to me, and at the same time he drew up an agreement by which I agreed to give to him or to his two daughters—I don't remember the reading of the agreement now—one-half of whatever I made out of the deed, and that agreement he put on record immediately.

26 Q. Was that the first intimation you ever had of the existence of a deed from Mrs. Washington to Darby?

A. Yes, sir; the first was on the 23rd; that was Saturday afternoon, and the 25th was Monday.

27 Q. (Reading.) Did Mr. Morrison ever give to you any consideration, money or otherwise, for his agreement or bond to you, marked Exhibit D?

A. No; he never paid me any money or anything else.

—. Do you know anything about Mr. Morrison paying her $100 or not?

A. I know the agreement was made; it was made in my presence.

28 Q. What was the $100 paid for; for whose benefit?

A. Mrs. Washington said she would make that deed to Mr. Morrison if he would pay a debt of hers of $100.

29 Q. To whom?

A. To her lawyers; that's what she stated. I was present, and he said he would pay it.

30 Q. And then the deed was executed?

A. Yes, sir.

31 Q. Were you present when the deed was executed to Morrison?

A. I was present when it was delivered. As to its acknowledgment, I don't remember whether I was present then.

32 Q. But when it was delivered to Morrison?

585 A. Oh, yes; when it was delivered to Morrison I was present.

33 Q. Did you hear any conversation between Morrison and Mrs. Washington as to the Darby matter, or what did you hear as to Mr. Darby having been her attorney and giving up papers or anything of the kind?

A. Yes, sir; there was something said about it. I don't distinctly remember, but Mrs. Washington assured Mr. Morrison that all transactions between her and Mr. Darby were closed. She assured him of that.

34 Q. Did you hear Mrs. Washington say anything to Mr. Morrison as to whether she had or not made any deeds to anybody else or not?

A. I heard her say she had never made any deeds.

35 Q. You heard her say that to him?

A. Yes, sir.

36 Q. When was it she said to you positively; was it the same time, or a prior conversation?

A. Both. The first time I saw her, the first day I saw her, I asked her if she had ever made any conveyances, and she said she never had, the first time.

37 Q. How many times did you see her before the time she executed the deed to Morrison, including the time she executed the deed to Morrison?

A. I suppose a dozen times; perhaps 15 times.

38 Q. That you saw her before the deed was executed to Morrison?

A. Yes, sir.

39 Q. Did you have a conversation with her every time about these papers and titles?

A. Yes, sir; very extended.

40 Q. That was the business you saw her upon?

A. Yes, sir.

41 Q. Did you have the repeated conversations with her about her title to that land?

A. Yes, sir.

42 Q. Did she ever, in any of them, intimate that anybody else had any title by any conveyance of her's in any way, bond or obligation?

A. Never, sir.

43 Q. Did she deny it or not?

A. She denies it explicitly, because I asked her if she had
586 ever made a conveyance, and she said she had not.

44 Q. Now, I will ask you this question: Did she deny to you that she had such a brother, who was the father of this Charleston Abner Hammond, or that there were any children of Abner Hammond alive?

(Mr. PRIEST, the deputy clerk, interrupting, to Mr. Jewett:) I will take these letters upstairs.

The COURT: The letters are in the custody of the court.

Mr. HENDERSON: I have not asked any order of that kind.

The COURT: I know you have not. (To the clerk:) You better keep all these letters and deeds together.

Mr. MORRISON: And here is the other letter which was not amongst those.

Mr. JEWETT: I would like that these letters of Mr. Darby to Mrs. Washington should be delivered to Mr. Morrison, because I might want to use them in this case.

The COURT: They can be produced at any time.

Mr. JEWETT: I have no objection to the clerk keeping them.

The CLERK: I will put them in the safe.

Examination resumed:

45 Q. Do you know whether Mrs. Washington received money here in consideration of compromises?

A. I don't know it of my own knowledge; from hearsay only.

46 Q. You were not present when the $800 was paid over?

A. No, sir.

47 Q. You know it was figured up?

A. Yes; I made up the account myself.

48 Q. How much did you make it?

A. I counted up Mrs. Washington's share, and she received a 15th of $12,000—$800.

49 Q. That was on the compromise?

A. Yes, sir.

50 Q. Was there ever any intimation of dispute about Mrs. Washington's title to the one-15th of that land until you discovered the Darby deed?

A. I never heard of any.

51 Q. State whether the compromise to all the lands were
587 made on the basis that Mrs. Washington owned one-15th until you discovered the Darby deed.

A. Several compromises were made. I believe I drew every deed for all those compromises for both sides. I drew one-15th for Mrs. Washington in full faith, believing that she owned one-15th. The

other parties deeded so, and the deeds were based repeatedly on this basis until the Darby matter came up.

52 Q. How many did you compromise?

A. I think as many as 5 or perhaps 6.

53 Q. Before you discovered the Darby deed?

A. Yes, sir.

54 Q. In all these cases state whether you received back from Mrs. Washington a deed in compromise, a deed purporting to be signed and executed by her for her share.

A. Always; and recorded some of them myself.

Cross-examination by Mr. HENDERSON:

1 X Q. You saw Mrs. Washington before Mr. Morrison saw her?

A. Yes, sir.

2 X Q. How long before?

A. I saw her in the latter part of January, 1874, first, and Mr. Morrison, I think, never saw her until May.

3 X Q. You reported you had seen her to Mr. Morrison?

A. Yes; I have copies of letters I wrote to Morrison.

4 X Q. You made a contract while down there with her?

A. Yes, sir.

5 X Q. Did you take a deed from her?

A. Not a direct deed. The contract is a conveyance, and both appear in one paper.

6 X Q. That's in your name?

A. Yes, sir.

7 X Q. Did you go as agent for Morrison?

A. For myself.

8 X Q. Individually?

A. Yes, sir; with the understanding that whatever I did down there Morrison was to share. The papers were taken in my own name.

9 X Q. He was to share equally with you?

A. He was to share.

588 10 X Q. Was it equally?

Counsel for the plaintiff objected, as this was a private arrangement between parties.

The court sustained the objection.

11 X Q. Mr. Morrison afterwards took his deed from her?

A. Yes, sir.

12 X Q. That was in May?

A. Yes, sir; I was present.

13 X Q. Were you interested in that?

A. A verbal agreement that I should have a part of it.

Counsel for the plaintiff objected.

The court sustained the objection; to which ruling defendants' counsel then and there excepted.

14 X Q. Now, you say Mrs. Washington told you that Darby was

to have one-half of this property; that she had a contract with him to that effect?

A. Yes, sir.

15 X Q. Did she tell you what sort of a contract?

A. No, sir.

16 X Q. Did she say whether it was oral or written?

A. She said it was written.

17 X Q. Then you did know at the time you purchased this property of Mrs. Washington that Darby had a contract under which he was entitled to one-half of this property, and that it was in writing?

A. She said she was to have it, exactly her language, but I never saw the contract until Mr. Darby gave it to me on the 23rd of October, 1880.

Q. When you say Mrs. Washington didn't state it truly you simply say she didn't tell you it was not a deed of conveyance?

A. I didn't say any such thing. I said I asked her explicitly if she had conveyed to Darby, and she told me she had not.

Q. But she told you Darby was to have one-half the property?

A. Yes, sir.

Q. And she said she had a written contract with him to that effect?

A. Yes, sir.

589 (By Mr. MORRISON:)

Q. Was I present then, Mr. Smith?

A. No, sir.

(By Mr. HENDERSON:)

Q. Did you tell Mr. Morrison about conversation you had with her?

A. Yes, sir.

Q. Before he purchased?

A. Yes, sir.

Q. Now, Mr. Smith, you say—I don't ask how much, because the court ruled out the question, but you say you were interested in this property with Mr. Morrison under this purchase?

A. I am.

Q. And didn't you agree with Mrs. Washington that you would prosecute the suits for the remaining third of this property, you and Morrison, for her interest and benefit?

A. No, sir.

Q. I am not asking about champerty, but whether you didn't agree with her that you would faithfully prosecute those suits in her behalf for the remaining third of the fifth which she retained and she conveyed to you and Morrison?

A. You have turned that round exactly. I agreed, in January, 1874, that I would prosecute at that time. I never mentioned Mr. Morrison's name and she never heard of him at the time I agreed to prosecute the suits. I hadn't said anything to Morrison at all.

Q. Are you not under a contract with Mrs. Washington now,

whereby you are to pay her a certain sum of money out of the land which you recover here?

A. Yes, sir.

Q. Now, how did you come to purchase of Darby in defiance of that arrangement which you had with Mrs. Washington?

A. Well, I would purchase any other outstanding titles that I saw around, or deeds, if I could get them for a small sum.

Q. Wasn't that a denial of Mrs. Washington's claim that you had agreed to prosecute for her?

A. I don't know whether it was or not. I don't think so.

Q. Don't you claim all the property which Mrs. Washington conveyed to Darby?

A. Yes, sir.

Q. Didn't you bring suit for that purpose?

A. Yes, sir.

590 Q. Don't you claim the whole of it regardless of your contract with Mrs. Washington?

A. Yes, sir; Mrs. Washington deceived me when she made that contract.

Q. Don't you claim this property for yourself?

A. I do; and Mrs. Washington obtained that contract from me by false representations.

Q. Is that your justification?

A. If Mrs. Washington obtained from me a contract by false representations I am justified in setting it aside when I discover they are false.

Q. Didn't she tell you she had a contract with Darby for one-half the property?

A. Yes, sir.

Q. You say she deceived you?

A. She said the contract with Darby was given up entirely when she made the contract with me, and that the contract between her and Darby was at an end.

Q. When was that?

A. When she and I first made the arrangement she told me explicitly. She at first said she could not make a contract with me because she had one with Mr. Darby, and after several days she said—yes, it was a month—she said that Mr. Darby's arrangement was entirely done away with, and that she was free to make one with me.

Q. Did you see Mrs. Washington but once previous to the time Mr. Morrison went?

A. A dozen times.

Q. When, between January and May?

A. Yes, sir.

Q. And she told you at a subsequent time, after the first conversation, that the papers had been returned to her by Darby, did she?

A. No; she didn't say "returned;" that the contract was ended, given up, and that Darby had declined to go further because she wouldn't furnish the money and he hadn't the means to do it; and

she said Darby had written for three hundred dollars and she declined to send it.

Q. You saw Darby here repeatedly?

A. Yes, sir.

Q. He was living here?

A. Yes, sir.

591 Q. When you came back to St. Louis did you ask Mr. Darby about that contract?

A. No.

Q. Did you ever have any conversation with him?

A. Not until 1880.

Q. Then you never did talk with him? Didn't you try to get the papers out of Darby's hands?

A. Darby's?

Q. Yes; didn't you ask Darby for the papers?

A. I have no recollection of doing so.

Q. Are you aware that Col. Morrison asked Darby for the papers?

A. Yes, sir.

Q. You are cognizant of that?

A. Yes, sir.

Q. You were interested with Morrison?

A. Certainly.

Q. And interested in making that demand?

A. Certainly.

Q. Did you ask Darby about that contract at that time?

A. I did not.

Q. Why didn't you, when you had been informed that she was to give him one-half of all this property?

A. Mrs. Washington said she would like not to have me speak to Mr. Darby about this matter; she told me so when I first went to see her, and she expressly requested me not to acquaint Mr. Darby that she and I were making any negotiations at all; expressly requested that.

Q. Did she give you any reasons for that?

A. Well, I don't remember any other reason except that she considered her relations with Darby partly confidential, as she told me several times.

Q. You say every time you saw Mrs. Washington you talked of these titles?

A. Yes; always; that is what I went there for.

Q. Now, you had no notice, you say, of the Darby deed until 1880?

A. On the 23rd of October, 1880.

Q. Didn't you go to Darby then and ask him how much he would take for his title in that property?

A. Did I?

Q. Yes.

A. I did on the 25th of October, 1880.

Q. Didn't you go to Darby's office or first communicate the fact to Darby that you knew he had a deed and you wanted his title?

592 A. No, sir.

Q. You say you met him on Fourth street first?
A. Northeast corner of Fourth and Olive.
Q. Did he start the negotiations?
A. Yes, sir.
Q. How did he come to tell you he had a deed?
A. Because he asked how the Hammond suit was getting on, and I told him very well, and he said, How are you getting on with Mrs. Washington?
Q. What brought it up?
A. Mrs. Washington had been here and written to a number of people, trying to sell her title, negotiating with several parties. Her title had become a sort of public notoriety, and a great many people had heard of it, and she offered to sell it to me, to Mr. Morrison, and other parties. The thing was very much talked of prior to that.
Q. Wasn't there some difference between you and Morrison about that time about this land?
A. Yes, sir; not of this piece.

Mr. JEWETT: I object.
Mr. HENDERSON: Why?
Mr. JEWETT: Simply because it is none of your business whether they quarrelled or not.
The COURT: If it leads to the conversation with Mr. Darby he may answer.

WITNESS: Mr. Morrison and I had a difficulty in regard to a tax title that was bought at the court-house door of which I had furnished the money or part of the money and Morrison had furnished part of the money, and I wanted that deed for my share, and Morrison——
The COURT: You need not go into that.
WITNESS: Well, that is all; it was not this lot 50 at all.
Q. I understand before you purchased from Darby that a difficulty occurred between you and Morrison about your interest in this land?
A. No, sir; it was about a tax title bought at the court-house.
Q. That involved your interest in this land?
593 A. No; it was a tax title; it stood on its own merits, irrespective of anything else.
Q. But it involved this identical land?
A. No; lot 49.
Q. But that is a part of the claim, isn't it?
A. Yes, sir.
Q. You know it was a part of the Hunot claim you and Morrison disagreed about?
A. Yes, sir.
Q. Not lot 50, but a part of the claim?
A. Yes, sir.
Q. Did you see Darby at all after this difficulty occurred between you and Morrison?
A. No- until afterwards.

Q. Now, do you know whether a difficulty had occurred between Darby and Morrison?

A. In what way?

Q. In any way about this land.

A. Suppose you ask Morrison; he is present.

Q. Well, do you know?

A. In regard to this land?

Q. Yes.

A. No; none that I knew of.

Q. Do you know whether a difficulty existed between you and Darby?

A. None that I knew of.

Q. You had seen Darby hundreds of times from 1874 up to 1880?

A. Very likely.

Q. Mr. Darby had been a witness in these cases and examined, hadn't he?

A. No, sir; I think only once.

Q. He was called as a witness in this case?

A. Only when you brought him; never before, I think.

Q. He was examined in that case; that is what I asked.

A. I think he was, and that is the only time he was brought up.

Q. Now, how long was it after this difference between you and Morrison about the tax title that you saw Darby?

A. Oh, I don't know; I might have seen Darby many times; I met him a great many times in the street. Darby and myself were very friendly always.

Q. Darby never said a word to you about it?

A. Never.

Q. You never mentioned it to him?

A. Never.

Q. But on that occasion, after the difficulty between you
594 and Morrison, Darby did mention it?

A. Yes, sir.

Q. And then you purchased, for $100 cash down, Darby's title?

A. Yes, sir.

Q. And then you set up the defence against Mrs. Washington for that part of the land which had been compromised in her name?

A. Yes, sir.

Q. You claimed all for yourself?

A. I have, upon suit, and it has gone to the higher court.

Q. You are contending for the whole?

A. Yes, sir.

Q. Did you inform Mrs. Washington before you bought that interest?

A. No, sir; I heard of it Saturday night, and I bought it Monday morning.

This concluded the examination of the witness.

Mr. JEWETT, counsel for plaintiff: I will now offer certain proclamations.

Mr. HENDERSON: I shall not object to the reading of them; of

any proclamations that have ever been issued, or executive orders or otherwise.

Mr. JEWETT: I do not think now of anything else; but it is possible I have omitted some papers, and if so I will bring them in hereafter.

Mr. HENDERSON: I desire now to introduce a single paper, and that is the appeal which Mr. Whittlesey made to the Department of the Interior against the issue of a patent for the Hunot claim in 1859. It is dated St. Louis, April 17th, 1860, to the Secretary of the Interior, Washington, D. C.

I offer this to show that the patent had been recorded from August 30th, 1859, down to April 17th, 1860, when this appeal was made. It is true the patent had not been delivered, but it had been recorded in the books, and this appeal, on which it is pretended now the patent was held back by the department—this appeal was
595 not made until April 17th, 1860, and this is the original paper signed by Mr. Whittlesey, counsel for the Pacific Railroad Company, made to the General Land Office, at Washington.

(Pl'ff- objected as incompetent & irrelevant & as being the act of a private person, but court overruled said objection, and pl'ff- duly excepted.)

C. C. Whittlesley's Appeal, April 17th, '60.

ST. LOUIS, *April 17th*, 1860.

To the Secretary of the Interior, Washington, D. C.:

The Pacific Railroad Company, by Whittlesey, their attorney, appeal from the decision of the Commissioner of the General Land Office in ordering a patent to issue upon New Madrid survey No. 2500, in T. 45, R. 7 E. of 5 P. M., in the name of Joseph Hunot, upon patent certificate 492, issued in place of pat. cert. No. 404, issued by the recorder of land titles at St. Louis Feb'y 2, 1833.

And for causes of appeal the Pacific R. R. Company show that said land or part thereof, to wit, fr. sections 8 and 18, *were* granted by act of Congress to the State of Missouri on June 10, 1852, and by the State of Missouri to said Pacific R. R. Co. by act of Dec. 25, 1852.

And said Pacific Railroad Company show that Peter Lindell, claiming under Joseph Hunot, has no title to the land included in said surv. No. 2500 for several reasons:

1. Said survey No. 2500 embraces part of the St. Louis Grand Prairie common fields, and the said Peter Lindell is claiming title to said fields by limitations.

2. That by the decision of the Supreme Court of the United States in the case of Easton *vs.* Salisbury, 21 Howard's U. S. Rep., 426–431, the New Madrid location under N. M. cert. No. 161 was absolutely void because not located within one year after the act of Congress of April 26, 1822.

596 The case of Bagnall *vs.* Broderick, 13 Pet. R., 436, decides that the return of the officially approved survey by the sur-

veyor general to the recorder of land titles constitutes the location of the land which binds the Government, and that the claimant must assent to the exchange is decided by the U. S. Sup. C't in Lessieur *vs.* Price, 12 Howard Rep., 59; Cabanne *vs.* Lindell, 12 Mo. R., 184.

By reference to the papers in this case it will be found that application was first made to locate N. M. C. 161 in Howard county, Missouri. See application of Nov. 14, 1816, by Rufus Easton, assignee & att'y for claimant, and that afterward application was made to locate the same in T. 45 N., R. 7 E. See application of June 16, 1818.

By reference to the papers and records it will be seen that the survey No. 2500 was not returned to the recorder of land titles by the surveyor general until Feb. 2, 1833, at which date there was no authority to make the location, as decided in Easton *vs.* Salisbury, 21 Howard R., 426.

The location not having been made in accordance with law, so much of sec. 8 & 18, T. 45 N., R. 7 E., as was not included within the Grande Prairie common-field lots became and was the property of the United States, and passed to the State of Missouri by act of Congress of June 10, 1852, and to the Pacific R. R. Co. by act of Missouri of Dec. 25, 1852.

The order of events will appear by the following tabular statement:

Confirmation to Joseph Hunot by act Apr. 29, 1816; New Madrid cert. No. 161 issued to Joseph Hunot for 480 ac. (cert. 37 for 160 having been previously issued) Aug. 12, 1816; Nov. 14, 1816, Rufus Easton, assignee and att'y of Joseph Hunot, applies to locate lands in Howard Co. — Nov. 4, 1816; June 16, 1818, application made by
Rufus Easton to locate in fr. sec. 17, 45 N., R. 7 E., fr. sec. 18,
597 and off east side of fr. sec. 8 for quantity survey No. 2500, made by Joseph C. Brown, d'y sur., June 23rd, 1819.

Survey No. 2500 returned to rec. land titles Feb. 2, 1833, and thus land located.

Feb. 2, 1833, patent certificate No. 404 issued by order of recorder of land titles.

Pat. cert. 404 & sur. 2500 set aside and new survey No. 2500 issued Feb. 10, 1859, by Jno. Loughborough, surv. gen.

New pat. cert. No. 492 on new survey 2500 issued Feb. —, 1859.

The Pacific Railroad Co. therefore claim that the title vested in it before pat. cert. 492 issued, and that said cert. 492 & pat. cert. No. 404 were both absolutely void, and that said Co. is the legal owner of all lands in fr. sec. 8 & 18, T. 45 N., R. 7 E., 5 P. M., not embraced in some claim confirmed by act of Congress.

Said Pacific Railroad Company prays a hearing upon said matter before any patent shall issue to said Peter Lindell under Joseph Hunot, and objects to the giving said patent to said Lindell as the assignee of said Hunot.

CHAS. C. WHITTLESEY,
Counsellor of Pacific R. R. Co.

Commissioner General Land Office, Washington, D. C.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *November* 13, 1879.

I, J. M. Armstrong, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of an appeal dated April 17, 1860, filed in this office by Chas. C. Whittlesey, counsellor for the Pacific Railroad Company, is a true and literal exemplification of the original paper which, by a stamp thereon and a record of letters received, is shown to have been received in this
598 office April 20, 1860.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] JOHN M. ARMSTRONG,
Acting Commissioner of General Land Office.

Mr. JEWETT: I think I will put in the Darby contract to show that that don't convey any title—the contract made between him and Mrs. Washington.

Darby Contract.

This agreement, made and entered into by and between John F. Darby, attorney-at-law, of St. Louis, Missouri, and Mary A. Washington, of Macon, in the State of Georgia—that is to say, she, the said Mary A. Washington, claims to have and to hold in her own right an interest in certain lands situated in the State of Missouri and Arkansas, supposed to be derived mostly and rightfully by inheritance from her deceased father and mother, Samuel Hammond and Eliza Amelia Hammond, *deceased*, and, for the purpose of asserting and maintaining her rights, hath employed and retained John F. Darby as her counsel to sue for and recover same, the said John F. Darby engaging to do so upon a contingent fee of one-half of whatever lands and real estate that may be recovered in full compensation for his professional services, and in the event that nothing is recovered he is to make no charges against the said Mary A. Washington for his services whatever, and if additional counsel be employed said John F. Darby engages to do so at his own expense, free of all charges to said Mary A. Washington.

Witness our hands and seals this fourteenth day of June, 1873.

JOHN F. DARBY. [SEAL.]
MARY A. WASHINGTON. [SEAL.]

Signed in duplicate.

599 STATE OF GEORGIA, }
County of Bibb, } *ss*:

Be it remembered that Mrs. Mary A. Washington, who is personally known to the undersigned, clerk of the superior court within and for the county and State aforesaid, which is a court of record, having a seal, to be the same person whose name is subscribed to the foregoing agreement or instrument of writing as a party thereto,

this day appears before me and acknowledges that she executed and delivered the same as her voluntary act and deed for the uses and purposes therein contained.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this nineteenth day of June, in the [SEAL.] year eighteen hundred & seventy-three.

ALBERT ROSS,
Clerk Superior Court, Bibb County, Georgia.

I as-ign the within contract to Edward C. Smith for value received and without recourse.

Witness my hand and seal this 25th day of October, 1880.

JOHN F. DARBY.

Mr. HENDERSON: From whom was it obtained?

Mr. SMITH: From Mr. Darby when he gave me the deed.

Mr. JEWETT: I cannot get it to-night. It is in the safe-deposit company.

Mr. HENDERSON: In reference to the sheriff's deed, I want to be understood, between pages 43 and 63 of the record, inclusive, that includes all the record of the courts, the acknowledgment of the deed, the certificate of the clerk, and everything in connection with the deed, the proof of the deed, certificate of the clerk that deed was proved in court, and the clerk's record on the subject.

(See pp. 93 to 103 of this transcript.)

600 This closed the evidence.

The plaintiffs then offered the following instructions, which were given:

Pl'fs' Instructions Given.

(1.)

The court declares the law to be that the common-field lots of the city of St. Louis existed in point of fact with boundaries upon the ground, and as they so existed they were confirmed to the cultivators by the act of Congress of June 13th, 1812.

As there was no condition of survey attached, the surveyor general had no power to survey the claimants into their lands or out of them, and in making his surveys he must be governed by the old Spanish monuments upon the ground, and if he undertakes arbitrarily to push back the lots from their original boundaries such surveys are not binding upon any person whose rights are injuriously affected.

Glasgow *vs.* Lindell, 50 Mo.

(2.)

The court declares the law to be that unless it is proven by the evidence in the case that some particular lot of land was occupied, cultivated, or possessed by some particular person or individual of St. Louis before December 20th, 1803, which person must be named

in the evidence, and unless the evidence describes with reasonable certainty the boundaries or location of said lot of land, so that it can be ascertained with reasonable certainty that the said lot of land so described and so cultivated or possessed by some known person covers the piece of land sued for in this case, the defendants have no defence to this action on the ground that the land was granted or confirmed to any person by the act of June 13th, 1812.

Vasquer *vs.* Ewing, 42 Mo.

601 (3.)

The court declares the law to be that the evidence in this case does not authorize the court, setting as a jury or trier of the facts, to find that any part of the land claimed in this suit was inhabited or cultivated as a common-field lot prior to December, 1803, by any named person, nor how long such cultivation, if any such existed, and the defendants have no defence in this action under any common-field title.

(4.)

The court declares the law to be that the evidence offered by defendants as to inhabitation and cultivation before December, 1803, of any of the land sued for in this case is not sufficient to establish any defence in this case under such inhabitation and cultivation.

(5.)

The court is requested to declare the law to be that the legal and proper effect and meaning of the act of Congress of Feb'y 17th, 1815, commonly called the New Madrid act, is to confer on the owner of the New Madrid land at the date of the act the right to make and the benefit of the New Madrid location under the provisions of said act, and that the title to the new location vested in such owner of those claiming under him.

McCamant *vs.* Patterson, 39 Mo., 100.

(6.)

The court is requested to declare the law to be that, as it appears in evidence that the United States through Recorder Bates issued to Joseph Hunot or his legal representatives New Madrid certificate No. 161, so called, in lieu of lands owned by him in New Madrid county and claimed to have been injured by earthquakes, it is not material that said land in New Madrid should have been sur-
602 veyed or platted, or either, by the United States, or that it be very particularly described in the deeds of Hunot or Vandenbenden, and plaintiffs' title would not fail for want of such survey or particular-ly of description if there is sufficient in the descriptions to satisfy the court that the land referred to by Bates in his certificate is the land conveyed by Hunot to Vandenbenden & by him to Easton.

(7.)

The court is requested to declare the law to be that the document-

ary and other evidence put in by plaintiffs establishes a legal title in the plaintiffs as the legal representatives of Joseph Hunot, and the verdict must be for them, unless that title is defeated by evidence put in by defendants.

(8.)

The court is requested to declare the law to be that in a sheriff's deed there is no presumption of a contract on the part of the debtor to convey any particular piece of land, and that the deed cannot be aided by any presumption as to what the sheriff intended to convey, and that the deed cannot be varied or aided in the description by parole testimony any further than to show that the description in the deed did apply to the land claimed under it, and that the land was known in the neighborhood by the description given in the deed.

(9.)

If the court, as trier of the facts, finds from the evidence that the judgment against Hammond put in evidence by defendants was rendered in May, 1823, and that no deed was made to Hammond by Easton of the land in dispute till September and October, 1823, then the court is requested to declare the law to be that there is no evidence in the case that Hammond had, in May, 1823, any such interest in said land as could be sold on execution, and that only such interest as he had at the time of the rendition of said
603 judgment could be sold on execution issued on the same.
Terr. Law, vol. 1, page 120; also see 61 of same, page 855.

(10.)

The court is requested to declare the law to be that *is* said Samuel Hammond had no title, legal or equitable, to any land in United States survey number 2500 at the time of the levy and sale, in September and October, 1823, by Sheriff Walker on execution against said Hammond, then any title which the said Hammond or his heirs might afterwards acquire to any part of said survey by gift, grant, inheritance, or enurement would not pass to the purchasers under said execution sale by virtue of said execution sale.

(11.)

The court is requested to declare the law to be that, under all the documentary evidence put in this case, there was in 1823 no legal nor equitable title in Samuel Hammond to any part of the land in what *us* now known as United States survey number 2500, in the city of St. Louis, and that for that reason (having no reference to any other) no title, legal or equitable, to any part of said land was acquired by the purchasers under the levy and sale by Sheriff Walker on execution against said Hammond in September and October, 1823, as put in evidence by defendants in this case.

(12.)

The court declares the law to be that if the officers of the United

States Land Department declined to issue or deliver the patent for said survey number 2500 to any person claiming said land, or to recognize its validity as a patent till November 12th, 1860, then said patent was not effective to convey any title out of the United States till it was so "issued" by the said department, in November, 1860, and that the statute of limitation only began to run in favor of defendants by virtue of said patent from and after that time.

604 (14.)

The court declares the law to be that if all the plaintiffs except J. L. D. Morrison are the lawful descendants of Samuel Hammond, to whom Rufus Easton conveyed said land in 1823, and further find that said Hammond's descendants, in whom this title was, were residents of the so-called Confederate States during the late War of the Rebellion, then the time of the continuance of the said war is no part of the ten years' time before the commencement of this suit necessary to give the defendants title by adverse possession, and that the States of South Carolina, Georgia, Alabama, and Tennessee were Confederate States, and the war in the three first-named States lasted from April 19th, 1861, to April 2d, 1866, and in the last-named State from August 16th, 1861, to April 2d, 1866, and that, as the deeds to Morrison were dated since the close of the war, he is entitled to the same rights as the plaintiffs under whom he claims.

(15.)

The court is requested to declare the law to be that the deed from the public schools of St. Louis to defendants' ancestor, Lindell, of the land in United States survey number 2500 conveyed to said Lindell no title to said survey.

Vide Kissel *vs.* Schools, 18 Howard, 19.
Papin *vs.* Ryan & Walker, 32 Mo., 21.

(16.)

If the court, as trier of the facts, believes from the evidence that in May, 1874, James L. D. Morrison, for a valuable consideration, received a deed from Mary Ann Washington of "two undivided thirds of all the land in said survey No. 2500, to which she was entitled as heir of Samuel Hammond through the said deed of Rufus Easton and wife, as aforesaid, or otherwise," and that the said J. L. D. Morrison recorded said deed in St. Louis county (now city), Mo.,
605 in June, 1874, and that at the time of taking said deed and for long after he had no knowledge nor information nor notice that prior to his deed the said Washington had conveyed to John F. Darby one undivided half of said survey, as heir of Samuel Hammond, by a deed of prior date to said Morrison's, but which deed was not recorded in the city or county of St. Louis till 1880, then the court is requested to declare the law to be that said deed to said Morrison was operative to convey to him the two-thirds it purported to convey, regardless of the said deed to said Darby.

The plaintiffs also offered the following instructions, which were refused by the court; to the refusal to give which the pl'ffs then and there excepted:

Pl'ffs' Instructions Refused.

(13.)

If the court, as trier of the facts, finds from the evidence in the case that the fee-simple or legal title to the land in dispute had not been out of the United States, either by patent or act of Congress, for the space of ten years last before the commencement of this suit, exclusive of the time of the continuance of the late civil war, then the court is requested to declare the law to be that the adverse possession of the defendants and those under whom they claim does not give them title by adverse possession and is no defence to this action.

The defendants asked the court to give the following instructions, which were given:

Def'ts' Instructions Given.

(XIII½.)

If the defendants or those under whom they claim have been in the actual, continual, open, notorious, and hostile possession of the premises in controversy for thirty years or more immediately prior to the time of the commencement of this suit, claiming and holding the same adversely to all other persons during the whole
606 of said time under color of title, as read in evidence, then and in that case the said defendants are the legal representatives of Joseph Hunot within the meaning of the patent of August 30, 1839, and the act of Congress of June 30, 1864, both of which were read in evidence, and the plaintiffs cannot recover in this action.

(XIV.)

When the patent to Joseph Hunot or his legal representatives read in evidence by the defendants, was issued the same related at least as far back as the time of the passage of the act of Congress of April 26, 1822, if not to June 23, 1819, which is the time the field survey was made of the land for which said patent was issued.

(XX.)

The certified copy of the deed from Samuel Hammond, by sheriff, to Richard Relfe & Beverly Chew, read in evidence by the defendants, is lawful evidence on their behalf, in connection with all of the other facts and circumstances in evidence in this case.

(XXI.)

The court, sitting as a jury, may well presume from all of the facts and circumstances in evidence in this cause that a deed of conveyance for the land described is a certified copy of the record

of the circuit court of St. Louis county of November 4, 1823, read in evidence by the defendants, as follows, to wit: "A tract of land containing two hundred and forty arpens, more or less, bounded on the south by land of Gratiot & Phillipson, on the west by the land of John P. Cabanne, and on the east by land of William Stokes and others, and includes the big spring known by the name of Hammond's spring," was at the time of the date of said record duly executed, acknowledged, and delivered to Richard Relfe and Beverly Chew, and that the clerk of said court, at the time of the date of said record, endorsed upon said deed a certificate of the said acknowledgment thereof under the seal of said court, in due
607 form of law, and that by said deed the sheriff of St. Louis county, at the said time of the date of said record, conveyed to said Relfe and Chew all of the right, title, and interest of said Samuel Hammond in and to said land described in the said copy of said record hereinbefore mentioned, dated November 4, 1823.

(XXII.)

If the court, sitting as a jury, believe from the evidence in this cause that the land described in the deed, dated November 4, 1823, of Samuel Hammond, by sheriff, to Richard Relfe and Beverly Chew, read in evidence by the defendants, was at the time of the sale mentioned in said deed well known in the community where the same is situated by the description given in said deed, then and in that case said description is sufficient in law; and if the court believe from the evidence that the premises in controversy in this suit are a part of the land included within said description, then and in that case all of the right, title, and interest which said Samuel Hammond owned in said premises in controversy in this suit at the time of said sale mentioned in said deed were conveyed in fee simple by said deed to said Relfe and Chew, and the plaintiffs cannot recover in this action.

To the giving of which instructions the plaintiffs then and there excepted, and the court overruled exceptions.

The defendants asked the court to give the following instructions, which were refused:

Def'ts' Instructions Refused.

(I.)

The plaintiffs cannot recover in this action, because there is no evidence that Joseph Hunot ever, prior to 1811, delivered to the United States recorder of land titles any written notice or other instrument in writing stating the nature and extent of his claim or claims to the land in the district or county of New Madrid for which the certificate No. 161, read in evidence, was given in the name of Joseph Hunot or his legal representatives.

608 (II.)

The plaintiffs cannot recover in this action, because there is no

evidence that Joseph Vandenbenden ever delivered to or caused to be recorded by the United States recorder of land titles any written notice of any grant, order of survey, deed, conveyance, or other written evidence of his claim to the land in the district or county of New Madrid for which the certificate No. 161, read in evidence, was given in the name of Joseph Hunot or his legal representatives.

(III.)

The plaintiffs cannot recover in this action, because there is no evidence that Joseph Hunot ever, prior to 1811, delivered to the United States recorder of land titles any written notice or other written instrument stating the nature and extent of his claim or claims to the land in the district or county of New Madrid for which the certificate No. 161, read in evidence, was given in the name of Joseph Hunot or his legal representatives; nor is there any evidence that Joseph Vandenbenden ever delivered to or caused to be recorded by said recorder of land titles any written notice of any grant, order of survey, deed, conveyance, or other written evidence of his claim or claims to said land in said district or county of New Madrid for which said certificate No. 161, read in evidence, was given in the name of Joseph Hunot or his legal representatives.

(IV.)

If the court, sitting as a jury, believe from the evidence that the land conveyed by Joseph Hunot to Joseph Vandenbenden by the deed dated May 12, 1810, read in evidence by the plaintiffs, is not the same land that was confirmed to said Hunot by the confirmation to him, the said Hunot, read in evidence by the plaintiffs, then and in that case the court declares the law to be that the plaintiffs cannot recover in this action.

609 (V.)

All of the surveys read in evidence by the plaintiffs of location 161, in the name of Joseph Hunot or his legal representatives, which were made by Joseph C. Brown, D. S., dated June 23, 1819, were superseded by the survey which was recorded and approved by the surveyor general, and read in evidence by the defendants, dated January 22, 1859.

(VI.)

The patent certificate No. 492, read in evidence by the defendants, supersedes all other patent certificates, and the return read in evidence, made to the recorder of land titles by the surveyor general on the 5th of February, 1859, of the survey approved by him on January 22, 1859, supersedes all other returns to said recorder made by him or any of his predecessors in office.

(VII.)

The court, sitting as a jury, may from all of the numerous facts and circumstances in evidence in this case presume that Samuel

Hammond in his lifetime, between September 29, 1823, being the date of the deed from Rufus Easton and wife to him, read in evidence by the plaintiffs, and the time of his death, in 1842, disposed of or parted with the land in suit (if he ever owned it) by conveyance or otherwise, and the plaintiffs cannot therefore recover it in this action.

(VIII.)

If the court, sitting as a jury, believe from the evidence that the Pacific railroad did not appeal to the Secretary of the Interior until April 17th, 1860, from the decision of the Commissioner of the General Land Office in ordering the patent to issue to Joseph Hunot or his legal representatives, read in evidence by the defendants, then and in that case said appeal was and is null and void, and said patent took effect from its date, which is August 30, 1859.

610 (VIII½.)

When the patent from the United States to Joseph Hunot or his legal representatives, dated August 30, 1859, read in evidence, was signed, sealed, countersigned, and recorded, as the same purports to be, then the title to the land therein described passed from the United States in fee simple to the grantees therein mentioned, and the delivery of said patent to said grantees or to any other person or persons was not essential to pass said title, and the presumption is that said patent was signed, sealed, countersigned, and recorded as aforesaid at the time of the date thereof.

(IX.)

If the court, sitting as a jury, believe from the evidence that the patent to Joseph Hunot or his legal representatives, read in evidence, dated August 30, 1859, was recorded on the records of the General Land Office prior to the date of the appeal of C. C. Whittlesey in behalf of the Missouri Pacific Railroad Company, read in evidence, then said record of said patent is tantamount to a delivery of said patent, and the statute of limitation began to run at the time of the date of said patent against any right, title, or interest which the plaintiffs or those under whom they claim may have had in or to the land in suit in this case, and the presumption is that the patent was recorded at the time of its date.

(X.)

It was not until August 16, 1861, that all intercourse between the States designated as in rebellion and the inhabitants thereof and the citizens of other States and other parts of the United States became unlawful. Therefore the statute of limitation commenced running against any right, title, or interest which the plaintiffs or those under whom they claim may have had in or to the land in suit in this case at the time the date of the patent to Joseph Hunot

or his legal representatives, read in evidence, and did not
611 stop running until August 16, 1861, and commenced running again when the civil war ended, and did not stop running until the time of the commencement of this suit; and if the whole time said statute run as aforesaid was ten years or more before the time of the commencement of this suit, then and in that case all of the right, title, and interest of the plaintiffs in and to said land are barred by said statute, and the plaintiffs cannot recover in this action.

(XI.)

The proclamation of the President of the United States of June 13, 1865, annulling in the territory of the United States east of the Mississippi all restrictions previously imposed upon intercourse with the States declared in rebellion and other parts of the Union took effect on that day. The civil war ended, therefore, June 13, 1865, in the territory of the United States east of said River Mississippi.

(XII.)

The statement contained in the petition from Samuel Hammond to the President of the United States, read in evidence, dated February 21, 1826, amount- to an admission by said Hammond that at the time of the date of said petition he did not own or claim to — land in suit *in* this case, and the plaintiffs are bound by said admission and estopped from asserting in this case any right, title, or interest in or to said land.

(XIII.)

There is no evidence showing that the plaintiffs ever acquired or now own or hold any right, title, or interest in or to the premises in controversy in this cause under or by virtue of the act of Congress of June 30, 1864, which was read in evidence in this case by said plaintiffs.

(XIV½.)

When the patent to Joseph Hunot or his legal representatives, read in evidence by the defendants, was issued the same re-
612 lated at least as far back as to June 16, 1818, when Joseph C. Brown, for Rufus Easton, applied to the surveyor general to locate the certificate No. 161 in the name of said Joseph Hunot or his legal represeutatives, as appears in evidence.

(XV.)

If the court, sitting as a jury, believe from the evidence that the land in suit in this case is within the Grande Prairie common field, and that the same was cultivated prior to December 20, 1803, and that the person or persons who cultivated the same as aforesaid were inhabitants of the former town of St. Louis, and are identified by all of the facts and circumstances in evidence in the case, then and in that case the title thereto passed out of the United States by virtue of the passage of the act of Congress of June 13, 1812, and the plaintiffs cannot recover in this action.

(XVI.)

If the court, sitting as a jury, believe from all the evidence in this cause that the premises in controversy in this suit are within the Grande Prairie common field, then and in that case the plaintiffs have shown no title to said premises and cannot recover in this action.

(XVII.)

The surveys numbers 1815, 3340, 1814, and 1813, read in evidence by the defendants, which were recorded in 1857, under the direction of the Commissioner of the General Land Office, supersede the surveys of the same numbers read in evidence by the plaintiffs, which were recorded in 1855, without the direction of said Commissioner, and therefore said surveys, which were recorded in 1857, are evidence of the proper location of the common-field lots therein respectively mentioned; and said surveys recorded in 1855 are no evidence in opposition to said surveys recorded in 1857, provided the court, sitting as a jury, believe from the evidence that before pro-
613 ceeding to make and record said surveys of 1857 all parties concerned were notified by the surveyor general of the purport of the order of said Commissioner of November 27, 1856, read in evidence, to make and record said surveys of 1857.

(XVIII.)

As the plaintiffs claim under the act of Congress of June 30, 1864, read in evidence by them, they cannot dispute the surveys of 1857, numbers 1815, 3340, 1814, and 1813, read in evidence by the defendant-, because said surveys of 1857 were made and recorded by competent authority before the passage of said act of Congress.

(XIX).

The deed read in evidence by the plaintiffs from Rufus Easton and wife to Samuel Hammond, dated September 29, 1823, describes no land which can be identified with reasonable certainty, and is therefore void, and conveyed no title to said Hammond, and the plaintiffs cannot recover in this action.

To the refusal of which the defendants then & there excepted.

Afterwards the court gave judgment for the defendants.

In due time and within four days after said judgment was entered for defendants plaintiffs filed a motion to set aside said judgment and for a new trial, which motion is as follows:

Motion for New Trial.

In the Circuit Court in and for the City of St. Louis, Mo., April Term, 1885.

DAVID L. HAMMOND *et al.*, Pl'ffs,
vs.
WALTER S. JOHNSON *et al.*, Def'ts.

And now come the plaintiffs and move the court to set aside the verdict and judgment rendered for the defendants and to grant to the plaintiffs a new trial for the following reasons:

614 1st. Because the court admitted, at the request of defendants and against the objection of the plaintiffs, illegal, irrelevant, and incompetent evidence.

2nd. Because the verdict and judgment rendered is against the evidence and the weight of evidence.

3rd. Because the court presumed the existence of important facts upon incompetent and irrelevant testimony offered by defendants and against the law appliable to presumptions of facts and against the objection of the pl'ffs.

4th. Because the court gave illegal and improper instructions asked by the def'ts and objected to by pl'ffs.

5th. Because the court refused to give legal and proper instructions asked by the pl'ffs.

6th. Because the court gave for the defendants against the objection of the pl'ffs illegal and improper instructions contradictory to legal and proper instructions given for the plaintiffs, thus giving inconsistent instructions.

7th. Because the judgment of the court was illegally and improperly given for the defendants, when it should have been given for pl'ffs.

D. T. JEWETT,
Att'y for Def'ts.

On the tenth of June, A. D. 1885, the court overruled said pl'ffs' motion to set aside said judgment and for a new trial; to which action of said court in overruling said motion plaintiffs then and there excepted.

And now plaintiffs ask that all of the foregoing evidence, records, documents, proclamations, testimony, objections, and exceptions and all motions and all the rulings and proceedings of the court in this case may be made a part of the record, which is accordingly done, this 20th day of June, 1885.

WILLIAM H. HORNER, *Judge.* [SEAL.]

614*a* STATE OF MISSOURI, } ss:
City of St. Louis, }

In the Circuit Court, City of St. Louis, June Term, 1885.

DAVID L. HAMMOND *et al.*, Pl'ffs, }
vs. } Affidavit for Appeal.
WALTER S. JOHNSTON *et al.* }

STATE OF MISSOURI, } ss:
City of St. Louis, }

D. T. Jewett, att'y for pl'ffs, being duly sworn, makes oath and says that the appeal prayed for in the above-entitled cause is not made for vexation or delay, but because the affiant believes that the appellant is aggrieved by the judgment or decision of the court.

D. J. JEWETT.

Sworn to and subscribed before me this 22nd day of June, A. D. 1885.

CHAS. F. VOGEL, *Clerk.*

Know all men by these presents that we, James L. D. Morrison & Edward C. Smith, as principals, and Frederic Augustus Smith & D. T. Jewett, as sureties, are held and firmly bound unto Walter S. Johnston *et al.* in the sum of five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at St. Louis this 22nd day of June, A. D. 1885.

The condition of the above obligation is such that whereas David L. Hammond, James L. D. Morrison, Edward C. Smith, &
614*b* others have appealed from the judgment rendered against them and in favor of Walter S. Johnson *et al.*, as defendants in the circuit court, city of St. Louis, in an action of ejectment without damages, but for costs of suit:

Now, if said appellants shall prosecute their appeal with due diligence to a decision in the supreme court of the State of Missouri, and shall perform such judgment as shall be given by the said supreme court or such as the said supreme court may direct the circuit court, city of St. Louis, to give, and if the judgment of said circuit court or any part thereof be affirmed and said appellant shall comply with and perform the same, so far as it may be affirmed, and pay all damages and costs which may be awarded against them by the said supreme court, then this obligation to be void; otherwise to remain in full force and effect.

EDWARD C. SMITH. [SEAL.]
JAS. L. D. MORRISON. [SEAL.]
FREDERIC AUGUSTUS SMITH. [SEAL.]
D. T. JEWETT. [SEAL.]

Approved in open court this 22d day of June, 1885.
Attest:
CHAS. F. VOGEL, *Clerk.*

STATE OF MISSOURI, } ss:
City of St. Louis, }

I, Charles F. Vogel, clerk of the circuit court, city of St. Louis, do hereby certify the foregoing to be a true, full, and complete transcript of the record and proceedings in the above-entitled cause as fully as the same remain on file and of record in my office.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in the city of St. Louis, this 7th day of September, 1885.

CHAS. F. VOGEL, *Clerk.*

615 And afterwards, to wit, on the 1st day of November, A. D. 1887, the following further proceedings were had in the supreme court of the State of Missouri in said cause, viz:

Submission.

DAVID L. HAMMOND *et al.*, App., }
vs. }
WALTER S. JOHNSON, Rec., &c., *et al.*, Resp. }

Come now the parties, by attorneys, and, after argument herein, submit this cause to the court. Ordered that appellants have 20 days to file supplemental brief.

Judgm't.

NOVEMBER 28TH, 1887.

DAVID L. HAMMOND, EDWARD C. SMITH, CHARLES L. HAMMOND, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, James L. D. Morrison, William F. Barsh, and Augusta G. Barsh, His Wife; Thomas M. Price, and Catherine V. Price, His Wife; Joseph S. McKie, and Anna W. McKie, His Wife, and Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, Laura and Virginia Briquet, by Their Curator, E. H. Hesse, Appellants,
vs.
LEVIN H. BAKER and CLARA A. BAKER, His Wife, and WALTER S. JOHNSTON, Receiver of the National Bank of the State of Missouri, Respondents.

Appeal from circuit court, city of St. Louis.

616 Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid in form aforesaid by the said circuit court of the city of St. Louis rendered, be in all things affirmed and stand in full force and effect; and it is further considered and adjudged by the court that the said respondents recover against the said appellants their costs and charges herein expended, and have therefor execution. (Opinion filed.)

617 Which said opinion is in the words and figures as follows, to wit:

618 In the Supreme Court of Missouri, October Term, 1887.

DAVID L. HAMMOND *et al.*, Appellants,
v.
WALTER S. JOHNSTON *et al.*, Respondents.

Opinion of the Court.

This is an action of ejectment for lot 50 in Peter Lindell's Second Addition to the city of St. Louis. The suit was begun on the 15th day of June, 1874. There was a judgment, on a trial by the court without a jury, for defendants, and the plaintiffs prosecute this appeal.

The title of the plaintiffs is as follows:

Joseph Hunot claimed a headright of 800 arpents of land in New Madrid county, under a Spanish permission to settle dated in 1802. The claim, based on possession and cultivation, was presented to the old board of commissioners, and was rejected in 1811. Subsequently, and, it would seem, on November 1, 1815, Recorder Bates recommended the claim for 640 acres. The report was confirmed by the act of Congress of April 29, 1816 (3 U. S. Stat., 328).

Before this, and on the 12 May, 1810, Hunot by a warranty deed conveyed the land to Joseph Vandenvenden, who by a like deed conveyed the same to Rufus Easton on the 4 November, 1815. The land having been injured by earthquakes, Recorder Bates, on the 12 August, 1816, issued to Joseph Hunot or his legal representatives what is known as New Madrid certificate No. 161, for 480 acres of land, a certificate for 160 acres having been previously issued. On the 16 June, 1818, Rufus Easton made application to the surveyor general to have certificate No. 161 located on certain lands, being the same upon which it was subsequently located. A survey
619 appears to have been made as early as June 23, 1819, which is known as survey No. 2500, describing the 480 acres of land. This survey was not returned by surveyor general to the recorder of land titles until the 8 January, 1833. On the 10 July, 1819, Rufus Easton conveyed to William Stokes 234 acres, the same being the southern portion of the survey, and by his deed dated the 29 September, 1823, acknowledged 9th October, 1823, and recorded 9th February, 1824, Easton conveyed the remaining 240 acres, being the northern portion of the survey, to Samuel Hammond. The lot in question is a part of the 240 acres.

Samuel Hammond left St. Louis largely indebted to the Government and to individuals, and returned to South Carolina in 1824, where he died in 1842, leaving five children, one of whom is living. This child, Mary Washington, and the children and heirs of her deceased brothers and sisters are plaintiffs in this suit. The other plaintiff, Morrison, in 1873–4 procured seven or eight deeds from some of the other plaintiffs, conveying to him a two-thirds interest in the survey.

The defendants put in evidence a certified copy of a sheriff's deed to Richard Relf and Beverly Chew, conveying to them the 240 acres, it is claimed. Relf, Chew, and Mary Clark commenced a suit

in the St. Louis circuit court in 1819 against Samuel Hammond, which resulted in a judgment in favor of plaintiffs. This judgment was affirmed in the then supreme court for the northern district on May 22d, 1823. On the next day an execution was issued against Samuel Hammond for $6,877, by virtue of which the sheriff levied upon the property, and on the 8 October, 1823, sold the same to Relf and Chew. The deed is dated the 4 November, 1823, was acknowledged in the circuit court on the same day, and recorded
620 on the 27 January, 1824. It is a copy of this deed which was read in evidence. Relf & Chew conveyed the land to Leter Lindell in 1840. Before that, and in 1834, Joseph Hunot made to Lindell a quitclaim deed for the whole survey. On the trial it was stipulated that Lindell took possession of the survey in 1831, and that he, his heirs, and their grantee, Johnston, have had and held continuous adverse possession down to the trial of this case.

Defendant put in evidence a patent from the United States, dated August 30, 1859, to Joseph Hunot or his legal representatives. A plat of the survey is made a part of the patent, which shows that the survey conflicts with certain surveyed common-field lots, and these are excepted from the operation of the patent. It appears that in March, 1833, Peter Lindell transmitted the patent certificate to the General Land Office at Washington and requested a patent. The matter was not attended to for a long time and then only upon the agreement of Lindell that the exceptions before mentioned should be stated in the patent.

Plaintiffs then put in evidence the act of Congress of June 30, 1864, 13 U. S. Stat., private laws 7, whereby the United States relinquished all their title to the land described in survey No. 2500 to Joseph Hunot or his legal representatives.

1. Various objections are made to the defendants' title and especially to the sheriff's deed to Relf & Chew. The first point is that the court erred in admitting in evidence the certified copy from the recorder. When this deed was offered counsel for the plaintiff objected to the use of a copy, stating that the original was in the
621 power of the defendants, but no proof was then made of the alleged fact and the court received the copy. After the close of the defendants' case the plaintiffs called the clerk of the court, who produced the original deed from the papers in another of these Hammond suits which had been previously tried. The deed was shown to the judge, but neither party offered it in evidence. The court at the time made no ruling as to whether the original should be put in evidence by defendants, but by an instruction declared the deed to be lawful evidence in connection with the other evidence. Our statute makes various provisions with respect to the use of certified copies of deeds as evidence. Under sec. 697, R. S., the record or a transcript thereof is made evidence when it is shown to the court by oath or affidavit that the instrument is lost or not within the power of the person desiring to use it. Under this section the deed must be acknowledged and certified according to the previous sections, which relate to deeds between individuals and do not apply to the acknowledgment of a sheriff's deed. Other provis-

ions of a general character are found under the head of evidence from sections 2299 to 2302, inclusive, making any deed or conveyance acknowledged and certified according to the law in force at the date of the deed evidence and allowing a certified copy to be used when it shall be shown that the original has been lost, destroyed, or not in the power of the party desiring to use it. Plaintiffs insist that the copy of the sheriff's deed could only be used by complying with the sections of the statute before noticed or some of
622 them. Under the head of executions it is provided that every officer executing a deed shall acknowledge the same before the circuit court of the county where the land is situated, and the clerk must endorse thereon a certificate of the acknowledgment. Then follows sec. 2395, which provides: "Every deed executed and acknowledged, as provided in the three preceding sections, or proved, shall be recorded as other conveyances of land, and thereafter such deed or a copy thereof or of the record, certified by the recorder, shall be received as evidence in any court in this State without further proof of the execution thereof."

This section, it will be seen, is specific, and has reference to deeds made by officers upon sales under executions. It makes the deed or a copy of the record, certified by the recorder, evidence without further proof of the execution. Proof of loss or inability to produce the original is not made a condition to the use of the copy from the recorder. In this respect the statute is unlike those of a more general character before noticed. This section has been a part of the statute law of this State ever since the revision of 1825, where it appears, under the head of "executions," as sec. 21. The statutes with respect to conveyances and evidence have undergone many changes, but this section remains substantially the same as when first adopted. It has been again and again held in other States that a certified copy of a deed recorded and required to be recorded by a sworn public officer is not secondary evidence, but stands on an equal footing with the original. Curry *et al. v.* Raymond, 28 Pa. St.,
623 144; Dick *v.* Black, 8 Pet., 30; Wells *v.* Williams, 3 Bibb, 264. The point actually ruled in Smith *v.* Phillips, 25 Mo., 567, was that the copy of the record of the sheriff's acknowledgment could not be read to prove that a deed had been made by the sheriff until proof was first made of the previous existance and loss of the deed. Arbuchon *v.* Murphy, 22 Mo., 123, and Miller *v.* Wells, 5 Mo., 6, have no relation whatever to a deed executed by a sheriff.

It results from what has been said that the statute before quoted was designated to and does make a copy of the sheriff's deed from the recorder's office, as well as the original, primary evidence. The proceedings upon which the deed is based—that is to say, the judgment and execution—are matters of record, and it may be this is the reason for the distinction in favor of deeds executed by officers; but, however that may be, the distinction exists, and a copy of the deed, duly certified by the recorder, is primary evidence, and it should be received in evidence as such.

2. The next objection to the sheriff's deed is that Hammond, the debtor, had no interest in the land at the date of the judgment sub-

ject to sale under an execution. The deed from Easton to Hammond bears date 29 September, 1823, and was acknowledged on the 9th October, 1823. The judgment is treated by counsel on both sides as of date 22 May, 1823, and the sheriff's sale was made on the 8 October following; so that the sale was made after the date of the deed, but on the day before it was acknowledged. But this is not all. Rufus Easton owned the whole survey, and on the 10 July, 1819, conveyed the south 234 acres to Stokes. This
624 deed, in the description, calls for a "stone at the southwest corner of Col. Samuel Hammond survey, thence east 47 66 links to the southeast corner of said Hammond survey," and this is the dividing line between the two portions of the survey. Again, the deed from Easton to Hammond, dated 29 Sept., 1823, on its face purports to be made "in consideration of the sum of $1,583, to him in hand paid by the said Samuel Hammond, and pursuant to the conditions of a certain bond executed by said Rufus Easton to the said Samuel Hammond and James I. Wilkinson, dated 3d September, 1818." This recital, it will be seen, is in a deed under which all the parties to this suit claim, and they are alike affected by it. This recital stands without any further explanation. It shows clearly enough that Hammond had an interest in the property as early as September, 1818, for if the deed was made in pursuance of a bond, what could the bond have been but one calling for a deed? It must have been a bond not only calling for a deed but for a conveyance of this identical land. Hammond then had an equitable interest in the property, and that too long before the date of the judgment or sheriff's sale, *of the judgment or sheriff's sale.* That an equitable interest in real estate could be seized and sold on execution cannot be doubted. Ter. Laws, vol. I, p. 120, sec. 15; Brant *v.* Robertson, 16 Mo., 149.

3. But upon this branch of the case it is further contended that Easton had no interest in the property, because the surveyor general had not at that time, and did not until 1833, return a plat of
625 survey No. 2500 to the recorder of land titles; that the United States as yet had parted with nothing, and hence the purchasers at the sheriff's sale got nothing. This position, if the correct one, would be equally fatal to the plaintiffs but for the fact that Hammond held by warranty deed from Easton; but it becomes important to see what, if any, interest Easton and, under him, Hammond had.

In Mackay *v.* Easton, 19 Wall., 630, it was held that there could be no effectual appropriation of the land located under a New Madrid certificate until the survey made by an officer of the Government was returned to the recorder of land titles; that what is known as the New Madrid act contemplates that the title of the owner to the injured lands should pass to the United States at the same time that a right to the new location passed to the claimant; that the two things are concurrent, and this exchange takes place when the claimant obtaines the patent certificate for the new location. This certificate cannot be issued until the surveyor makes a return of the survey to the recorder.

It is this date, then, that fixes the rights of the claimant, though the patent may not be issued until long thereafter; and so it was held in the Hot Springs cases, 92 U. S., 698. In those cases no return of the survey had been made until after the passage of the act of April 20, 1832, by which the land was reserved to the United States, and for this reason it was held that the land never became so appropriated as to give the claimant a vested right. The act reserving the property, therefore, had full force and effect. The rule of these cases is relied upon by the plaintiffs to show that Hammond
626 had no interest in the property subject to sale on execution.

But there are other rules of law deserving a consideration in this connection. In Landes *v.* Brant, 10 How., p. 372, it is said, quoting from Cruise: "There is no rule better founded in law, reason, and convenience than this: that all the several parts and ceremonies necessary to complete a conveyance shall be taken together as one act and operate from the substantial part by relation." In that case the old board of commissioners granted a certificate for 40 arpents of land to Clamorgan under Dodies in 1811. The confirmation was based upon previous possession of the claimant and was allowed by reason of the 2d section of the act of 1807. Before this confirmation and in 1808 Shray recovered a judgment against Clamorgan, under which the property was sold to McNair. Applying the rule of relation, it was held that the patent issued in 1845 related back to the first substantial act, namely, that of filing the claim, which was in 1805, and hence the sheriff's deed was held to control the legal title when the patent issued.

In Shepley *et al. v.* Cowan *et al.*, 91 U. S., 330, the plaintiff claimed title under a patent issued by this State, dated in 1850, for lands selected by the State under the act of 1841. The defendants claimed title under a patent from the United States, dated in 1866, issued upon a pre-emption right. It is there said: "The party who takes the initiatory steps in such cases, if followed up to a patent, is deemed to have acquired the better right as against others to the premises. The patent which is afterwards issued relates back to the date
627 of the initiatory act and cuts off all intervening claimants. Thus the patent upon a State's selection takes effect as of the time when the selection is made and reported to the Land Office; and the patent upon the pre-emption settlement takes effect from the time of the settlement as disclosed in the declaratory statement or proofs of the settler to the register of the local office." The court then proceeds to show that there is nothing in all this in conflict with certain other causes, where it is held that a party by settlement only upon public lands with intention to obtain title under the pre-emption laws did not thereby acquire a vested right so as to deprive Congress of the power to reserve or otherwise dispose of the land.

While the doctrine of relation is a fiction of the law, yet it will be resorted to when the ends of justice require it. It will be applied as between the person acquiring the title to land by successive acts and those who acquire an interest from or under him. Callahan *v.* Davis, 90 Mo., 82.

Now, the act of February 17, 1815, for the relief of the inhabitants of New Madrid county because of earthquakes, was designed to be for the benefit of those who owned the injured lands at the date of that act or thereafter became the owners. McCamat *v.* Patterson, 39 Mo., 102. Vandervender was not then the absolute owner, for the title had not been confirmed to Hunot; but Vandervender had a deed from Hunot dated in 1810, so that the plaintiffs must and do claim, and properly, too, that Vandervender acquired the legal title to the injured lands by force of the doctrine of relation.

Easton became the owner of the land in November, 1815, and,
628 at his instance, the New Madrid certificate was issued. As legal representatives of Hunot he then applied to the surveyor in 1818 to have the certificate located on the land described in the patent, giving to the surveyor a description of it, and on June 23d, 1819, the surveyor surveyed and made a plat of the land. In November, 1816, Easton executed and acknowledged a deed conveying the New Madrid land to the United States. It was not necessary that he should have made this deed, for when the exchange took place the law vested the title to the injured lands in the United States. But the act of applying to the surveyor to locate the land in question in satisfaction of the certificate and the act of the surveyor in making the plat were all necessary acts to procuring the patent, and as between Easton and those claiming under him there is no reason why the patent should not relate back to the date of these acts. It is true beyond all doubt that as between Easton and those claiming under him, on the one hand, and the United States, on the other, that there was no vested right in Easton and those claiming under him as against the United States until the surveyor returned the plat to the recorder of land titles, which was not done until 1833; but as between Easton and third persons he did acquire a priority and a right which the courts respect and uphold and enforce. This is clearly enough shown by the case of Shepley *et al. v.* Cowan *et al.*, *supra*. The fact that this right was not such as to deprive Congress of the power of otherwise disposing of the land makes it none the less a valuable right and an interest in and to the land. It was a right subject to sale under execution, for the law
629 then said that the sheriff's deed should be effectual for passing to the purchaser all the estate and interest which the debtor had at the time of the judgment. (1 Ter. L., p. 120, sec. 45.)

4. Again, the further point is made that the sheriff's deed is void for uncertainty in the description of the premises. It describes the property sold as follows: "All the right, title, interest, estate, and property of the said Samuel Hammond in and to * * * a tract of land, containing two hundredand forty arpents, more *of* less, bounded on the south by land of Gratiot and Philipson, on the west by land of John P. Cabanne, and on the east by land of Wm. Stokes and others, and includes the big spring known by the name of the Hammond spring."

It has been again and again ruled by this court that, however vague the description of the land in a sheriff's deed may be, parol

evidence is admissible to identify the premises and to show that in the community where the sale took place the land was known by the description given. Hart *v.* Rectar, 7 Mo., 532; Landes *v.* Perkins, 12 Mo., 239; Bates *v.* Bank of Mo., 15 Mo., 309; Bank *v.* Bates *et al.*, 17 Mo., 583.

The description in the sheriff's deed in Webster *v.* Blount, 39 Mo., 500, was one hundred and ten acres, part of the northwest quarter of section number twenty-six, in township fifty-nine, of range thirty-four. The proof was that the defendant in the execution in the attachment suit resided on the land for a number of years, and that the exact location of the one hundred and ten acres in that section was of public notoriety. It was there said that the description was amply good within the principles of the authorities before cited.

630 In McPike *v.* Allman, 55 Mo., 551, the property was sold on an execution against John B. Crow, and the sheriff's deed described the property as "80 acres, part of the west half of section 31, township 53, range 5." The proof showed that Crow had previously sold 120 acres off the north end of the west half of said section, and that he continued to own the balance of the half section, being $83\frac{12}{100}$ acres. The proof showed that the land was prairie land, unoccupied, and so was all the land around and adjoining it. It was known in the community that Crow owned the land; but in neither of the two cases last cited did it appear that the land was known by the particular designation given to it by the sheriff. In the case last cited the court said: "It would evidently be more satisfactory, where the description is so vague as it is in the case now being considered, that the parol evidence should prove some physical facts which are accessible to all by which the land can be identified when taken in connection with the description given, or that the land has acquired an appellation or name by which it is generally known, as in the case of Hart *v.* Rector; but it seems from the cases that no rule has been adopted on the subject." It is then held that the case was not distinguishable from that of Webster *v.* Blount. Again, in Adkin *v.* Moran, 67 Mo., 100, the defendant relied upon a sheriff's deed, which described the land as "seventy acres P. N. of N. E. of sec. 1, T. 59, R. 35." It was proved that Hoffaker, against whom the execution was issued, owned and occupied the land in dispute; that there were about 70 acres of it; that the land was known in the neighborhood as Huffacker's land; that he owned no other land nearer than one mile,

631 and that it was in the northeast part of the northeast quarter of said section one. The trial court excluded the deed, but this court reversed the judgment, saying that the case was not distinguishable from that of McPike *v.* Allman. In the case before us the evidence shows that the entire Hunot survey, containing 480 acres, is of an irregular shape. The northern and western lines are continuous; the southern is substantially so; the west line runs north from the south line some 36 chains, thence west some 40 chains, thence north some 60 chains to the north line. Thus it will be seen the southern portion of the survey extends east much further than the northern portion. It is this southern 234 acres

which was sold to Stokes by Easton before Hammond got his deed to the north 240 acres. At the date of the sheriff's deed Gratiot & Philipson owned land adjoining the entire south line of the survey, but the 234 acres sold to Stokes lies between them and the Hammond 240 acres. At the same time Stokes owned the land to the east of the south 234 acres Cabanne owned the land on west line of the Hunot survey.

While, perhaps, the description might be good for the whole Hunot survey, it gives accurately but one line of the 240 acres, and that is the western one.

But besides this evidence it is clearly shown that the 240-acre tract was well known as the Hammond land. There was a log house close to the western line of the 240 acres, well known as the Hammond house, and a noted spring near to it known in the community as the Hammond spring. There is some evidence tending *yo* show that Hammond's negroes lived in this house, and that Hammond, who lived in town, went out there to live during the summer; but the other facts, namely, that the 240 acres, the
632 house, and the spring were well known, as before stated, are not disputed. Indeed, we have seen that the deed from Easton to Stokes called for the Hammond survey, which could have been none other than this 240-acre tract. Had the sheriff omitted the references to Gratiot & Philipson on the south & Stokes on the east his description, in the light of the surrounding facts as they existed at that day, would have been infinitely better than that in several of the cases before cited, for what could it then mean but the 240 acres owned by Hammond, containing the big spring known as the Hammond spring. The call for the spring would fix and locate the tract with certainty. "Block 52, in De Kalb Co., Mo.," was held to be a good description of a parcel of land, in the light of the proof that it was known as block 52 by the parties to the deed and those in the neighborhood who were acquainted with it. Tetherom *vs.* Anderson, 63 Mo., 97.

In Shewalter *vs.* Piner *et al.*, 55 Mo., 218, the description was "a house and lot situated on a strip of ground between the first addition and Anderson's Addition to Lexington, fronting Pine street, and north of Turmer hall, in the city of," etc. There was but one lot on this strip north of "Turner hall," but that fronted on Cedar street and not on Pine street. The court there, conceding the rule to be that known monuments would control courses and distances, proceeds to say that it was equally true that where there is a false call or description in a deed and the false description can be rejected and leave a sufficient description to identify the land the false description will be rejected, and the remaining description, being sufficiently certain, will pass the title to the land.

633 So, in this case, we may reject the calls for Gratiot & Philipson and for Stokes and still have a good and sufficient description, one which is in every respect sufficient to pass the 240 acres, and which is in perfect accord with all the circumstances existing at the date of the deed. This deed was made fifty years ago, and the property has been in the actual possession of the defendant

and those under whom he claims for more than forty years, and no court would, under the evidence, be justified in pronouncing the deed void for uncertainty in the description of the premises. Surveyor Cozins, who surveyed the property for Lindell many years ago, with the sheriff's deed before him, had no difficulty in finding the land.

We have not overlooked the fact that during the progress of this trial Mr. Cozins, an old surveyor, familiar with these lands and surveys from an early day, went to this property, found the spring and the exact location of the old home, and reported that the old house was some 400 feet and the spring some two hundred feet still further east of the east line of the 240 acres, and therefore not on the Hunot survey, but on what is called the Conway survey; but he also says the line was not designated on the ground in 1823. If the land was known as the Hammond land and was identified by the Hammond spring, it can make no difference that subsequent accurate surveyors throw the spring over the line and on the Conway location. The inquiry is, How was the land known and designated at the date of the sheriff's deed? Our conclusion is that the description in the deed is good, and that it ought to be so held on the undisputed facts in evidence, and we do so hold.

634 5. Fourteen years nine months and fifteen days elapsed from the date of the patent to the commencement of this suit, while the period of our statute of limitations is ten years. The plaintiffs, to overcome the bar of the statute, show that before, during, and after the late war they resided in the Confederate States, and to that they couple the claim that the patent did not, in point of fact, become an operative grant until the 12 November, 1860.

The facts relative to the last question are these: As before stated, Peter Lindell, in March, 1833, transmitted the patent certificate No. 404 to the General Land Office, requesting a patent for the survey No. 2500. Objections were made because the survey conflicted with certain Spanish and confirmed claims in the Grand Para-rie common field. There the matter stood until 1858, when the surveyor general called the attention of the Commissioner of the Land Office to this survey. The Commissioner in a letter to the surveyor, dated August 25, 1858, states that Lindell had agreed to accept a patent which would except the adverse claims as shown on a diagram furnished by the surveyor. The surveyor was directed to notify the interested parties and to give public notice that, unless valid cause was shown to the contrary within three months from date of notice, the plat would be approved. The surveyor returned this new plat, showing the seven or eight adverse claims, to the recorder of land titles, who, on the 18 February, 1859, issued a new patent certificate in lieu of the old one. The plat was approved, and the patent issued thereon bears date 30 August, 1859. The evidence shows that patent was signed, sealed, and recorded on the last-mentioned date. The patent excepts the adverse claims.

635 On the 6 April, 1860, the Commissioner, in a letter to the recorder of land titles at St. Louis, directs him to notify the "parties opposed to the preperation of said patent" that if no ap-

peal was filed in his office by the 7 May following the patent would be sent to him for delivery. Whittelsey, for the Pacific railroad, in April, 1860, applied for an appeal, and on the 12 November, 1860, the Secretary of the Interior rendered a decision "in favor of issuing the patent;" whereupon it was, upon the same day, sent to the recorder at St. Louis for delivery.

In the case of the United States *vs.* Schurz, 102 U. S., 379, it is clearly and distinctly held that a patent to land from the United States is in many respects unlike an ordinary deed between persons; that in case of the patent the title to the land conveyed passes by matter of record to the grantee; that the patent needs no delivery to give it full effect, and that when it is made out, signed by the President, sealed with the seal of the General Land Office, countersigned, and recorded in the record books kept for that purpose it needs no further authentication or delivery. In that case the patent had been sent to the local officer for delivery, but in a few days and before delivered, it was recalled and deposited with the Secretary of the Interior, before whom an appeal was pending involving the question as to who was entitled to the land by patent from the Government. Although the appeal was pending before the Secretary, he was required by mandamus to deliver the patent to the person therein designated as grantee. Although the Commissioner of the General Land Office, in his letter to the recorder of St. Louis, speaks of the patent
636 as one in preparation, still the facts are that, after much deliberation and notice to all interested parties, the plat had been approved, the patent prepared, signed, sealed, and recorded. All this was done on or before the 30 August, 1859. It was then as perfect and complete a document as it was at any time thereafter. So far as we can see it was then complete, and every act required to be done to make it a grant had been done, unless it be held that delivery was essential. There is no claim that any of these acts had been done without authority. Besides all this, if the title passed by matter of record it would seem to follow that the decision of the Secretary of the Interior was but a decission in affirmance of what had been done, and we hold that the patent took effect as a grant on the 30 August, 1859. So far as acceptance is concerned it is sufficient to say that the patent was issued at the direct solicitation of Lindell.

If we are correct in this conclusion, the plaintiff, who resided in Tennessee, is barred; for, as to that State, the war, it is conceded, did not begin until 16 August, 1861, and that it ended as to that and the other States heretofore named on the 2d April, 1866. As to the States of South Carolina, Georgia, and Alabama, it was held in the case of The Proctor, 12 Wall., 700, that the war began on the 19 April, 1861, the date of the blockade proclimation, and ended on the 2d April, 1866. The same dates were taken as fixing the time for suspension of statutes of limitation in Brown *vs.* Hiatt, 15 Wall., 177; Adger *vs.* Alston, 15 Wall., 555, and Russ *vs.* Jones, 22 Wall., 576. It is earnestly and with much force argued that August

16, 1861, the date of President Lincoln's proclamation declar-
637 ing that the States before named were in a state of insurrection and prohibiting commercial intercourse, should be taken as the date of the commencement of the war, and not the 19 April, 1861, the date of the blockade proclamation; but we cannot see that the rule of those cases is modified in the latter case (91 U. S., 3; 93 U. S., 593; 99 U. S., 493), at least so far as fixing the period during which the statute of limitations was suspended. Until modified we accept them as fixing the dates by which the computation is to be made in cases like the present one.

6. From instructions given and refused it appears the circuit court held that the statute of limitations began to run against the plaintiffs before the date of the patent—before the legal title emanated from the United States. This is in accord with the ruling of the court of appeals in Hammond *vs.* Coleman, 4 Mo. App., 307, where it is in substance held that when the grant from the Government is to one or his legal representatives, we may have recourse to the statute of limitations in determining who that representative is. This court has heretofore given and still gives to the case of Gibbons *vs.* Choteau, 13 Wall., 92, a much broader scope. McIlhinney *vs.* Fick, 61 Mo., 329; Miller *vs.* Dunn, 62 Mo., 216. As to the Government, there is no statute of limitations, and in the Gibson case it is held that the statute leaves the right of entry upon the legal title subsequently acquired by the patent wholly unaffected by the adverse possession; that such possession, either by the plaintiffs or defendants, will not control the legal title. This being so, we do not see how the statute can operate as a transfer of the equitable right.

7. We disapprove instruction No. 21, given at the request
638 of the defendants. The sheriff's deed to Relf & Chew and a certified copy of it were in court. The copy was in evidence, and it cannot be contended that any other deed was ever made or intended to be made. There was no ground for presuming a deed, for the deed itself—the copy being, *prima facie*, equal to the original—was before the court. Why indulge in presumptions as to a thing when the thing itself is in proof? The copy, as far as it went, spoke for itself. Reame *vs.* Chambers, 22 Mo., 36. Where deeds were lost and the records of them defaced so that some portions of the acknowledgment could not be made out, we allow the presumption that the residue of the acknowledgements were formal. Addis *vs.* Graham, 88 Mo., 200. But that is a different thing from presuming an entire deed from the record entry of the sheriff's acknowledgment when a copy of the deed is before the court, and this is what the instruction says may be done.

Notwithstanding these erroneous instructions, under the view we take of the sheriff's deed and the force and effect we give to it, the title is in the defendants, and the judgment will be affirmed.

The other questions are presented by the record, and we have ruled upon them in order that there may be no embarrassment to either party in a review of this judgment. Much has been said with reference to common-field lots. No claim is made that the prop-

erty here in suit is a part of any such lot confirmed to any individual under the act of June 13, 1812, nor is it found as a fact that it is a part of any such lot not claimed by an individual. Some of the evidence of Mr. Cozins tends to show that the property is
639 west of Taylor avenue, and that the true west line of the old common fields is on, if not east of, Taylor avenue. This being true, the property is not within the Grand Prairie common field. It is, therefor-, conceived that the question whether the patent is void or even voidable by reason of the reservation in the 2d section of the act of 1812 is not presented by the record.

The judgment is therefore affirmed. All concur.

F. M. BLACK, *J.*

640 *Jud'm't Amended.*

FEBRUARY 20TH, 1888.

DAVID L. HAMMOND, EDWARD C. SMITH, CHARLES L. HAMMOND, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, James L. D. Morrison, William F. Barsh and Augusta G. Barsh, His Wife; Thomas M. Price and Catharine V. Price, His Wife; Joseph S. McKie and Anna W. McKie, His Wife, and Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, Laura and Virginia Briquet, by Their Curator, E. H. Hesse, Appellants,

vs.

LEVIN H. BAKER and CLARA A. BAKER, His Wife, and WALTER S. JOHNSTON, Receiver of the National Bank of the State of Missouri, Respondents.

Appeal from circuit court of the city of St. Louis.

Now, at this day, come the said appellants and ask the court that the judgment here be made to show the questions of law decided by this court. It is therefore ordered that the judgment of affirmance be amended by adding thereto the following: "Which said judgment of the circuit court is affirmed for the reasons set forth in the opinion herein filed, and which said opinion is hereby made a part of the record in this cause and is as follows, to wit:

641 *Opinion of the Court.*

This is an action of ejectment for lot 50, in Peter Lindell's second addition to the city of St. Louis. This suit was begun on the fifteenth day of June, 1874. There was a judgment, on a trial by the court without a jury, for defendants and the plaintiffs prosecute this appeal.

The title of the plaintiffs is as follows:

Joseph Hunot claimed a head-right of 800 arpents of land in New Madrid county, under a Spanish permission to settle dated in 1802. The claim, based on possession and cultivation, was presented to the old board of commissioners, and was rejected in 1811. Subsequently, and it would seem on November 1, 1815, Recorder Bates recom-

mended the claim for 640 acres. The report was confirmed by the act of Congress of April 29, 1816 (3 U. S. St., 328). Before this and on the twelfth May, 1810, Hunot, by a warranty deed, conveyed the land to Joseph Vandenbenden, who by a like deed conveyed the same to Rufus Easton on the fourth November, 1815. The land having been injured by earthquakes, Recorder Bates, on the twelfth August, 1816, issued to Joseph Hunot or his legal representatives what is known as "New Madrid certificate No. 161" for 486 acres of land, a certificate for 160 acres having been previously issued. On the sixteenth June, 1818, Rufus Easton made application to the surveyor general to have certificate No. 161 located on certain lands, being the same upon which it was subsequently located. A survey appears to have been made as early as June 23, 1819, which is know as "survey No. 2500," describing the 480 acres of land. This survey was not returned by surveyor general to the recorder of land titles until the eighth January, 1833. On the tenth July, 1819, Rufus Easton conveyed to William Stokes 234 acres, the same being the southern portion of the survey; and by his deed, dated the twenty-ninth September, 1823, acknowledged ninth October, 1823, and recorded ninth February, 1824, Easton conveyed the remaining 240 acres, being the northern portion of the survey, to Samuel Hammond. The lot in question is a part of the 240 acres.

Samuel Hammond left St. Louis largely indebted to the Government and to individuals, and returned to South Carolina in 1824, where he died in 1842, leaving five children, one of whom is living. This child, Mary Washington, and the children and heirs of her deceased brothers and sisters are plaintiffs in this suit. The other plaintiff, Morrison, in 1873–'74, procured seven or eight deeds from some of the other plaintiffs conveying to him a two-thirds interest in the survey.

The defendants put in evidence a certified copy of a sheriff's deed to Richard Relf and Beverly Chew, conveying to them the 240 acres, it is claimed. Relf, Chew, and Mary Clark commenced a suit in the St. Louis circuit court in 1819 against Samuel Hammond, which resulted in a judgment in favor of plaintiffs. This judgment was affirmed in the then supreme court for the northern district on May 22, 1823. On the next day an execution was issued against Samuel Hammond for $6,877, by virtue of which the sheriff levied upon the property, and on the eighth of October, 1823, sold the same to Relf and Chew. The deed is dated the fourth November, 1823; was acknowledged in the circuit court on the same day, and recorded on the twenty-seventh January, 1824. It is a copy of this deed which was read in evidence. Relf and Chew conveyed the land to Peter Lindell in 1840. Before that, and in 1834, Joseph Hunot made to Lindell a quitclaim deed for the whole survey. On the trial it was stipulated that Lindell took possession of the survey in 1831, and that he, his heirs and their grantee, Johnston, have had and held continuous adverse possession down to the trial of this case.

Defendants put in evidence a patent from the United States, dated August 30, 1859, to Joseph Hunot or his legal representatives. A plat of the survey is made a part of the patent, which shows that

the survey conflicts with certain surveyed common-field lots, and these are excepted from the operation of the patent. It appear that in March, 1833, Peter Lindell transmitted the patent certificate to the General Land Office, at Washington, and requested a patent. The matter was not attended to for a long time, and then only upon the agreement of Lindell that the exceptions before mentioned should be stated in the patent.

Plaintiffs then put in evidence the act of Congress of June 30, 1864 (13 U. S. St. Priv. Laws, 7), whereby the United States relinquished all their title to the land described in survey No. 2500 to Joseph Hunot or his legal representatives.

Various objections are made to the defendants' title, and especially to the sheriff's deed to Relf and Chew. The first point is that the court erred in admitting in evidence the certified copy from the recorder. When this deed was offered counsel for the plaintiff objected to the use of a copy, stating that the original was in the power of the defendants, but no proof was then made of the alleged fact, and the court received the copy. After the close of the defendants' case the plaintiffs called the clerk of the court, who produced the original deed from the papers in another of these Hammond suits, which had been previously tried. The deed was shown to the judge, but neither party offered it in evidence. The court at the time made no ruling as to whether the original should be put in evidence by defendants, but by an instruction declared the copy of the deed to be lawful evidence in connection with the other evidence.

Our statute makes various provisions with respect to the use of certified copies of deeds as evidence. Under section 697, Rev. St., the record or a transcript thereof is made evidence, when it is shown to the court, by oath or affidavit, that the instrument is lost or not within the power of the person desiring to use it. Under this section the deed must be acknowledged and certified according to the previous sections, which relate to deeds between individuals and do not apply to the acknowledgment of a sheriff's deed. Other provisions of a general character are found under the head of "Evidence," from sections 2299 to 2302, inclusive, making any deed or conveyance, acknowledged and certified according to the law in force at the date of the deed, evidence, and allowing a certified copy to be used when it shall be shown that the original has been lost, destroyed, or not in the power of the party desiring to use it. Plaintiffs insist that the copy of the sheriff's deed could only be used by complying with the sections of the statute before noticed or some of them. Under the head of "Executions," it is provided that every officer executing a deed shall acknowledge the same before the circuit court of the county where the land is situated, and the clerk must indorse thereon a certificate of the acknowledgment. Then follows section 2395, which provides: "Every deed executed and acknowl-
642 edged, as provided in the three preceding sections, or proved, shall be recorded as other conveyances of land: and thereafter such deed, or a copy thereof, or of the record, certified by the recorder, shall be received as evidence in any court in this State, without further proof of the execution thereof." This section, it will

be seen, is specific, and has reference to deeds made by officers upon sales under executions. It makes the deed or a copy of the record, certified by the recorder, evidence without further proof of the execution. Proof of loss or inability to produce the original is not made a condition to the use of the copy from the recorder. In this respect the statute is unlike those of a more general character before noticed. This section has been a part of the statute law of this State ever since the revision of 1825, where it appears under the head of "Executions" as section 21. The statutes with respect to conveyances and evidence have undergone many changes, but this section remains substantially the same as when first adopted. It has been again and again held in other States that a certified copy of a deed recorded and required to be recorded by a sworn public officer is not secondary evidence, but stands on an equal footing with the original. Curry *v.* Raymond, 28 Pa. St., 144; Dick *v.* Baleh, 8 Pet., 30; Wells *v.* Williams, 3 Bibb., 264. The point actually ruled in Smith *v.* Phillips, 25 Mo., 557, was that the copy of the record of the sheriff's acknowledgment could not be read to prove that a deed had been made by the sheriff until proof was first made of the previous existence and loss of the deed. Aubuchon *v.* Murphy, 22 Mo., 123, and Miller *v.* Wells, 5 Mo., 6, have no relation whatever to a deed executed by a sheriff.

It results from what has been said that the statute before quoted was designed to and does make a copy of the sheriff's deed from the recorder's office, as well as the original primary evidence. The proceedings upon which the deed is based—that is to say, the judgment and execution—are matters of record, and it may be this is the reason for the distinction in favor of deeds executed by officers; but, however that may be, the distinction exists, and a copy of the deed, duly certified by the recorder, is primary evidence, and it should be received in evidence as such.

The next objection to the sheriff's deed is that Hammond, the debtor, had no interest in the land at the date of the judgment subject to sale under an execution. The deed from Easton to Hammond bears date twenty-ninth September, 1823, and was acknowledged on the ninth October, 1823. The judgment is treated by counsel on both sides as of date twenty-second May, 1823, and the sheriff's sale was made on the eighth October following; so that the sale was made after the date of the deed, but on the day before it was acknowledged. But this is not all. Rufus Easton owned the whole survey, and on the tenth July, 1819, conveyed the south 234 acres to Stokes. This deed, in the description, calls for a "stone at the southwest corner of Col. Samuel Hammond survey; thence east 4,766 links to the southeast corner of said Hammond survey;" and this is the dividing line between the two portions of the survey. Again, the deed from Easton to Hammond, dated twenty-ninth September, 1823, on its face purports to be made "in consideration of the sum of $1,583, to him in hand paid by the said Samuel Hammond and pursuant to the conditions of a certain bond executed by said Rufus Easton to the said Samuel Hammond and James I. Wilkinson, dated third September, 1818." This recital, it will be

seen, is in a deed under which all the parties to this suit claim, and they are alike affected by it. This recital stands without any further explanation. It shows clearly enough that Hammond had an interest in the property as early as September, 1818; for, if the deed was made in pursuance of a bond, what could the bond have been but one calling for a deed? It must have been a bond not only calling for a deed, but for a conveyance of this identical land. Hammond then had an equitable interest in the property, and that, too, long before the date of the judgment or sheriff's sale.

643 That an equitable interest in real estate could be seized and sold on execution cannot be doubted. Terr. Laws, 120, § 45; Brant *v.* Robertson, 16 Mo., 149.

But upon this branch of the case it is further contended that Easton had no interest in the property, because the surveyor general had not at that time, and did not until 1833, return a plat of survey No. 2500 to the recorder of land titles; that the United States as yet had parted with nothing, and hence the purchasers at the sheriff's sale got nothing. This position, if the correct one, would be equally fatal to the plaintiffs but for the fact that Hammond held by warranty deed from Easton. But it becomes important to see what, if any, interest Easton, and under him Hammond, had.

In Mackay *v.* Easton, 19 Wall., 630, it was held that there could be no effectual appropriation of the land located under a New Madrid certificate until the survey made by an officer of the Government was returned to the recorder of land titles; that what is known as the New Madrid act contemplates that the title of the owner to the injured lands should pass to the United States at the same time that a right to the new location passed to the claimant; that the two things are concurrent; and this exchange takes place when the claimant obtains the patent certificate for the new location. This certificate cannot be issued until the surveyor makes a return of the survey to the recorder. It is this date, then, that fixes the rights of the claimant, though the patent may not be issued until long thereafter. And so it was held in the Hot Springs cases, 92 U. S., 698. In those cases no return of the survey had been made until after the passage of the act of April 20, 1832, by which the land was reserved to the United States, and for this reason it was held that the land never became so appropriated as to give the claimant a vested right. The act reserving the property, therefore, had full force and effect. The rule of these cases is relied upon by the plaintiffs to show that Hammond had no interest in the property subject to sale on execution; but there are other rules of law deserving a consideration in this connection.

In Landes *v.* Brant, 10 How., 372, it is said, quoting from Cruise: "There is no rule better founded in law, reason, and convenience than this, that all the several parts and ceremonies necessary to complete a conveyance shall be taken together as one act and operate from the substantial part by relation." In that case the old board of commissioners granted a certificate for 40 arpents of land to Clamorgan, under Dodier, in 1811. The confirmation was based upon previous possession of the claimant, and was allowed by rea-

son of the second section of the act of 1807. Before this confirmation, and in 1808, Spray recovered a judgment against Clamorgan under which the property was sold to McNair. Applying the rule of relation, it was held that the patent, issued in 1845, related back to the first substantial act, namely, that of filing the claim, which was in 1805, and hence the sheriff's deed was held to control the legal title when the patent issued.

In Shepley *v.* Cowan, 91 U. S., 330, the plaintiff claimed title under a patent issued by this State, dated in 1850, for lands selected by the State under the act of 1841. The defendants claimed title under a patent from the United States, dated in 1866, issued upon a pre-emption right. It is there said: "The party who takes the initiatory steps in such cases, if followed up to a patent, is deemed to have acquired the better right as against others to the premises. The patent which is afterwards issued relates back to the date of the initiatory act and cuts off all intervening claimants. Thus the patent upon a State's selection takes effect as of the time when the selection is made and reported to the Land Office; and the patent upon the pre-emption settlement takes effect from the time of the settlement, as disclosed in the declaratory statement or proofs of the settler to the register of the local office." The court then proceeds to show that there is nothing in all this in conflict with certain other cases where it is held that a party, by settlement only upon public lands, with intention to obtain title under the pre-emption laws, did not
644 thereby acquire a vested right so as to deprive Congress of the power to reserve or otherwise dispose of the land.

While the doctrine of relation is a fiction of the law, yet it will be resorted to when the ends of justice require it. It will be applied as between the person acquiring the title to land by successive acts and those who acquire an interest from or under him. Callahan *v.* Davis, 90 Mo., 82; 2 S. W. Rep., 216. Now, the act of February 17, 1815, for the relief of the inhabitants of New Madrid county because of earthquakes, was designed to be for the benefit of those who owned the injured lands at the date of that act, or thereafter became the owners. McCamat *v.* Patterson, 39 Mo., 102. Vandenbenden was not then the absolute owner, for the title had not been confirmed to Hunot; but Vandenbenden had a deed from Hunot dated in 1816, so that the plaintiffs must and do claim, and properly too, that Vandenbenden acquired the legal title to the injured lands by force of the doctrine of relation. Easton became the owner of the land in November, 1815, and at his instance the New Madrid certificate was issued. As legal representative of Hunot, he then applied to the surveyor, in 1818, to have the certificate located on the land described in the patent, giving to the surveyor a description of it; and on June 23, 1819, the surveyor surveyed and made a plat of the land. In November, 1816, Easton executed and acknowledged a deed conveying the New Madrid land to the United States. It was not necessary that he should have made this deed, for when the exchange took place the law vested the title to the injured lands in the United States. But the act of applying to the surveyor to locate the land in question in satisfac-

tion of the certificate and the act of the surveyor in making the plat were all necessary acts to procuring the patent; and, as between Easton and those claiming under him, there is no reason why the patent should not relate back to the date of these acts. It is true beyond all doubt that, as between Easton and those claiming under him on the one hand, and the United States on the other, *that* there was no vested right in Easton and those claiming under him, as against the United States, until the surveyor returned the plat to the recorder of land titles, which was not done until 1833. But, as between Easton and third persons, he did acquire a priority and a right which the courts respect and uphold and enforce. This is clearly enough shown by the case of Shepley *v.* Cowan, *supra*. The fact that this right was not such as to deprive Congress of the power of otherwise disposing of the land makes it none the less a valuable right and an interest in and to the land. It was a right subject to sale under execution; for the law then said that the sheriff's deed should be effectual for passing to the purchaser all the estate and interest which the debtor had at the time of the judgment. 1 Terr. Laws, p. 120, § 45.

Again, the further point is made that the sheriff's deed is void for uncertainty in the description of the premises. It describes the property sold as follows: "All the right, title, interest, estate, and property of the said Samuel Hammond in and to * * * a tract of land containing two hundred and forty arpents, more or less, bounded on the south by land of Gratiot and Philipson, on the west by land of John P. Cabanne, and on the east by land of Wm. Stokes and others, and includes the big spring known by the name of the 'Hammond spring.'" It has been again and again ruled by this court that, however vague the description of the land in a sheriff's deed may be, parol evidence is admissible to identify the premises, and to show that in the community where the sale took place the land was known by the description given. Hart *v.* Rector, 7 Mo., 532; Landes *v.* Perkins, 12 Mo., 239; Bates *v.* Bank, 15 Mo., 309; Bank *v.* Bates, 17 Mo., 583.

The description in the sheriff's deed in Webster *v.* Blount, 39 Mo., 500, was 110 acres, part of the N. W. ¼ of section No 26, in township 59, of range 34. The proof was that the defendant in the execution in the attachment suit resided on the land for a
645 number of years, and that the exact location of the 110 acres in that section was of public notoriety. It was there said that the description was amply good within the principles of the authorities before cited.

In McPike *v.* Allman, 53 Mo, 551, the property was sold on an execution against John R. Crow, and the sheriff's deed described the property as "80 acres, part of the west half of section 31, township 53, range 5." The proof showed that Crow had previously sold 120 acres off the north end of the west half of said section, and that he continued to own the balance of the half section, being 83.12 acres. The proof showed that the land was prairie land, unoccupied, and so was all the land around and adjoining it. It was known in the community that Crow owned the land. But in neither of the

two cases last cited did it appear that the land was known by the particular designation given to it by the sheriff. In the case last cited the court said: "It would evidently be more satisfactory, where the description is so vague as it is in the case now being considered, that the parol evidence should prove some physical facts which are accessible to all, by which the land can be identified when taken in connection with the description given, or that the land has acquired an appellation or name by which it is generally known, as in the case of Hart *v.* Rector; but it seems from the cases that no rule has been adopted on the subject." It is then held that the case was not distinguishable from that of Webster *v.* Blount.

Again, in Adkins *v.* Moran, 67 Mo., 100, the defendant relied upon a sheriff's deed which described the land as "seventy acres P. N. of N. E. of sec. 1, T. 59, R. 35." It was proved that Hoffaker, against whom the execution was issued, owned and occupied the land in dispute; that there were about 70 acres of it; that the land was known in the neighborhood as "Hoffaker's land;" that he owned no other land nearer than one mile, and that it was in the N. E. part of the N. E. ¼ of said section 1. The trial court excluded the deed, but this court reversed the judgment, saying that the case was not distinguishable from that of McPike *v.* Allman.

In the case before us the evidence shows that the entire Hunot survey, containing 480 acres, is of an irregular shape. The northern and western lines are continuous; the southern is substantially so; the west line runs north from the south line some 36 chains; thence west some 40 chains; thence north some 60 chains to the north line. Thus it will be seen the southern portion of the survey extends east much further than the northern portion. It is this southern 234 acres which was sold to Stokes by Easton before Hammond got his deed to the north 240 acres. At the date of the sheriff's deed Gratiot and Philipson owned land adjoining the entire south line of the survey; but the 234 acres sold to Stokes lies between them and the Hammond 240 acres. At the same time Stokes owned the land to the east of the south 234 acres. Cabanne owned the land on west line of the Hunot survey. While, perhaps, the description might be good for the whole Hunot survey, it gives accurately but one line of the 240 acres and that is the western one.

But besides this evidence it is clearly shown that the 240-acre tract was well known as the "Hammond land." There was a log house close to the western line of the 240 acres, well known as the "Hammond house," and a noted spring near to it, known in the community as the "Hammond spring." There is some evidence tending to show that Hammond's negroes lived in this house, and that Hammond, who lived in town, went out there to live during the summer. But the other facts, namely, that the 240 acres, the house, and the spring were well known, as before stated, are not disputed. Indeed, we have seen that the deed from Easton to Stokes called for the Hammond survey, which could have been none other than this 240-acre tract. Had the sheriff omitted the references to Gratiot and Philipson on the south and Stokes on the east, his description, in the light of the surrounding facts as they existed at that

day, would have been infinitely better than that in several of
646 the cases before cited; for what could it then mean but the
240 acres owned by Hammond, containing the big spring known as the "Hammond spring"? The call for the spring would fix and locate the tract with certainty. "Block 52, in De Kalb Co., Mo.," was held to be a good description of a parcel of land, in the light of the proof that it was known as block 52 by the parties to the deed and those in the neighborhood who were acquainted with it. Tetherow *v.* Anderson, 63 Mo., 97.

In Shewalter *v.* Pirner, 55 Mo., 218, the description was: "A house and lot situated on a strip of ground between the first addition and Anderson's addition to Lexington, fronting Pine street and north of Turner hall, in the city of," etc. There was but one lot on this strip north of "Turner hall," but that fronted on Cedar street and not on Pine street. The court there, conceding the rule to be that known monuments would control courses and distances, proceeds to say that it was equally true that where there is a false call or description in a deed, and the false description can be rejected and leave a sufficient description to identify the land, the false description will be rejected, and the remaining description, being sufficiently certain, will pass the title to the land.

So, in this case, we may reject the calls for Gratiot and Philipson and for Stokes and still have a good and sufficient description—one which is in every respect sufficient to pass the 240 acres and which is in perfect accord with all the circumstances existing at the date of the deed. This deed was made 50 years ago, and the property has been in the actual possession of the defendant and those under whom he claims for more than 40 years, and no court would, under the evidence, be justified in pronouncing the deed void for uncertainty in the description of the premises. Surveyor Cozins, who surveyed the property for Lindell many years ago, with the sheriff's deed before him, had no difficulty in finding the land.

We have not overlooked the fact that during the progress of this trial Mr. Cozins, an old surveyor, familiar with these lands and surveys from an early day, went to this property, found the spring and the exact location of the old house, and reported that the old house was some 400 feet east and the spring some 200 feet still further east of the east line of the 240 acres, and therefore not on the Hunot survey, but on what is called the "Conway survey." But he also says the line was not designated on the ground in 1823. If the land was known as the "Hammond land," and was identified by the Hammond spring, it can make no difference that subsequent accurate surveyors throw the spring over the line and on the Conway location. The inquiry is, how was the land known and designated at the date of the sheriff's deed? Our conclusion is that the description in the deed is good, and that it ought to be so held on the undisputed facts in evidence, and we do so hold.

Fourteen years nine months and fifteen days elapsed from the date of the patent to the commencement of this suit, while the period of our statute of limitation is ten years. The plaintiffs, to overcome the bar of the statute, show that before, during, and after the late war they

resided in the Confederate States, and to that they couple the claim that the patent did not, in point of fact, become an operative grant until the twelfth November, 1860. The facts relative to the last question are these: As before stated, Peter Lindell, in March, 1833, transmitted the patent certificate No. 404 to the General Land Office, requesting a patent for the survey No. 2500. Objections were made because the survey conflicted with certain Spanish and confirmed claims in the Grand Prairie common field. There the matter stood until 1858, when the surveyor general called the attention of the Commissioner of the Land Office to this survey. The Commissioner, in a letter to the surveyor dated August 25, 1858, states that Lindell had agreed to accept a patent which would except the adverse claims as shown on a diagram furnished by the surveyor. The surveyor was directed to notify the interested parties and to give public notice
647 that, unless valid cause was shown to the contrary within three months from date of notice, the plat would be approved. The surveyor returned this new plat, showing the seven or eight adverse claims, to the recorder of land titles, who, on the eighteenth February, 1859, issued a new patent certificate in lieu of the old one. The plat was approved, and the patent issued thereon bears date thirtieth August, 1859. The evidence shows that the patent was signed, sealed, and recorded on the last-mentioned date. The patent excepts the adverse claims. On the sixth April, 1860, the Commissioner, in a letter to the recorder of land titles at St. Louis, directs him to notify the "parties opposed to the preparation of said patent" that if no appeal was filed in his office by the seventh May following the patent would be sent to him for delivery. Whittelsey, for the Pacific railroad, in April, 1860, applied for an appeal, and on the twelfth November, 1860, the Secretary of the Interior rendered a decision "in favor of issuing the patent;" whereupon it was upon the same day sent to the recorder at St. Louis for delivery.

In the case of U. S. *v.* Schurz, 102 U. S., 379, it is clearly and distinctly held that a patent to land from the United States is in many respects unlike an ordinary deed between persons; that in case of the patent the title to the land conveyed passes by matter of record to the grantee; that the patent needs no delivery to give it full effect; and that when it is made out, signed by the President, sealed with the seal of the General Land Office, countersigned and recorded in the record books kept for that purpose, it needs no further authentication or delivery. In that case the patent had been sent to the local officer for delivery, but in a few days, and before delivered, it was recalled and deposited with the Secretary of the Interior, before whom an appeal was pending involving the question as to who was entitled to the land by patent from the Government. Although the appeal was pending before the Secretary, he was required by mandamus to deliver the patent to the person therein designated as grantee. Although the Commissioner of the General Land Office, in his letter to the recorder of St. Louis, speaks of the patent as one in preparation, still the facts are that after much deliberation and notice to all interested parties the plat had

been approved, the patent prepared, signed, sealed, and recorded. All this was done on or before the thirtieth August, 1859. It was then as perfect and complete a document as it was at any time thereafter. So far as we can see, it was then complete, and every act required to be done to make it a grant had been done, unless it be held that delivery was essential. There is no claim that any of these acts had been done without authority. Besides all this, if the title passed by matter of record, it would seem to follow that the decision of the Secretary of the Interior was but a decision in affirmance of what had been done; and we hold that the patent took effect as a grant on the thirtieth August, 1859. So far as acceptance is concerned, it is sufficient to say that the patent was issued at the direct solicitation of Lindell.

If we are correct in this conclusion, the plaintiff who resided in Tennessee is barred, for as to that State the war, it is conceded, did not begin until sixteenth August, 1861, and that it ended as to that and other States heretofore named on the second April, 1866. As to the States of South Carolina, Georgia, and Alabama, it was held in the case of The Protector, 12 Wall., 700, that the war began on the nineteenth April, 1861, the date of the blockade proclamation, and ended on the second April, 1866. The same dates were taken as fixing the time for suspension of statutes of limitation in Brown *v.* Hiatts, 15 Wall., 177; Adger *v.* Alston, *id.*, 555, and Ross *v.* Jones, 22 Wall., 576.

It is earnestly and with much force argued that August 16, 1861, the date of President Lincoln's proclamation, declaring that the States before named were in a state of insurrection, and prohibiting commercial intercourse, should be taken as the date of the commencement of the war, and not the nineteenth April, 1861, the date of the blockade proclamation. But we cannot see that
648 the rule of those cases is modified in the latter cases (Railroad Co. *v.* King, 91 U. S., 3; Bond *v.* Moore, 93 U. S., 593; Clark *v.* U. S., 99 U. S., 493), at least, so far as fixing the period during which the statute of limitations was suspended. Until modified we accept them as fixing the dates by which the computation is to be made in cases like the present one.

From instructions given and refused, it appears the circuit court held that the statute of limitations began to run against the plaintiffs before the date of the patent—before the legal title emanated from the United States. This is in accord with the ruling of the court of appeals in Hammond *v.* Coleman, 4 Mo. App., 307, where it is in substance held that when the grant from the Government is to one, or his legal representatives, we may have recourse to the statute of limitations in determining who that representative is. This court has heretofore given, and still gives, to the case of Gibson *v.* Chouteau, 13 Wall., 92, a much broader scope. McIlhinney *v.* Fick, 61 Mo., 329; Miller *v.* Dunn, 62 Mo., 216. As to the Government, there is no statute of limitations, and in the Gibson case it is held that the statute leaves the right of entry upon the legal title, substantially acquired by the patent, wholly unaffected by the adverse possession; that such possession, either by the plaintiffs or

defendants, will not control the legal title. This being so, we do not see how the statute can operate as a transfer of the equitable right.

We disapprove instruction No. 21, given at the request of the defendants. The sheriff's deed to Rolf and Chew and a certified copy of it were in court. The copy was in evidence, and it cannot be contended that any other deed was ever made or intended to be made. There was no ground for presuming a deed, for the deed itself—the copy being *prima facie* equal to the original—was before the court. Why indulge in presumptions as to a thing when the thing itself is in proof? The copy, as far as it went, spoke for itself. Reaume *v.* Chambers, 22 Mo., 36. Where deeds were lost and the records of them defaced, so that some portions of the acknowledgment could not be made out, we allow the presumption that the residue of the acknowledgments were formal. Addis *v.* Graham, 88 Mo., 200. But that is a different thing from presuming an entire deed from the record entry of the sheriff's acknowledgment, when a copy of the deed is before the court, and this is what the instruction says may be done.

Notwithstanding these erroneous instructions, under the view we have taken of the sheriff's deed and the force and effect we have given to it, the title is in the defendants, and the judgment will be affirmed. This result as to the effect of the sheriff's deed rendered it unnecessary to pass upon the other questions presented by the record, but we have ruled upon them in order that there may be no embarrassment to either party in a review of this judgment in the Supreme Court of the United States.

Much has been said with reference to common-field lots. No claim is made that the property here in suit is a part of any such lot confirmed to any individual under the act of June 13, 1812, nor is it found as a fact that it is a part of any such lot not claimed by an individual. Some of the evidence of Mr. Cozins tends to show that the property is west of Taylor avenue, and that the true west line of the old common fields is on, if not east of, Taylor avenue. This being true, the property is not within the Grand Prairie common field. It is therefore conceived that the question whether the patent is void or even voidable by reason of the reservation in the second section of the act of 1812 is not presented by the record. The judgment is therefore affirmed.

(All concur.)

F. M. BLACK.

649 *Writ of E. & Citation F'l'd.*

FEBRUARY 20TH, 1888.

DAVID L. HAMMOND *et al.*, App.,
vs.
WALTER S. JOHNSON, Rec'v'r, &c., *et al.*, Resp.

Now, at this day, there is presented to the Honorable E. H. Norton, chief justice, a writ of error to reverse the judgment in the

above cause and a citation directed to the said respondents, citing and admonishing them to be and appear at a Supreme Court of the United States on the second Monday of October next; also an assignment of errors is filed.

Which said writ of error is allowed, said citation signed and ordered to be filed and made a part of the record herein.

Which said assignment of error is in the words & figures as follows, to wit (attached to writ of error).

650 *App. Bond F'l'd.*

APRIL 4TH, 1888.

DAVID L. HAMMOND *et al.*, App.,
vs.
WALTER S. JOHNSTON, Rec'v'r, &c., *et al.*, Resp.

Come now the said appellants, by attorneys, and file their appeal bond herein in the sum of $500.00, with Melvin L. Gray and Fred. Augustus Smith as sureties, which bond is approved.

And which said bond is in the words and figures as follows, to wit:

651 *App'l Bond.*

Know all men by these presents that we, James L. D. Morrison and Edward C. Smith, as principal-, and Melvin L. Gray and Frederic Augustus Smith, as sureties, are held and firmly bound unto Walter S. Johnston, receiver of the National Bank of the State of Missouri, and Clara A. Baker in the full and just sum of five hundred dollars, to be paid to the said Walter S. Johnston, receiver, and Clara A. Baker; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twentieth day of February, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at the October term, A. D. 1887, of the supreme court of the State of Missouri, in a suit depending in said court between David L. Hammond, Charles L. Hammond, Mary A. Kingman, Emma W. Kingman, Julia S. Kingman, James L. D. Morrison, Edward C. Smith, William F. Barsh and Augusta G. Barsh, his wife; Thomas M. Price and Catherine V. Price, his wife; Joseph S. McKie and Anna W. McKie, his wife, and Louella McC. Kingman, William A. Kingman, Clement S. Kingman, Martha J. Kingman, Carrie Kingman, and Laura Virginia Briquet, by their curator, E. H. Hesse, plaintiffs, and Walter S. Johnston, receiver of the National Bank of the State of Missouri, and Clara A. Baker, defendants, judgment was rendered against the said plaintiffs; and the said plaintiffs having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the

said Walter S. Johnston, receiver, etc., and Clara A. Baker, citing and admonishing them to be and appear at a Supreme Court of the United States to be held at Washington, D. C., on the second Monday of October next:

Now, the condition of the above obligation is such that if the said plaintiffs shall prosecute said writ to effect and answer all damages and costs if they fail to make good their plea, then the above obligation to be void; else to remain in full force and virtue.

JAMES L. D. MORRISON. [SEAL.]
EDW'D C. SMITH. [SEAL.]
MELVIN L. GRAY. [SEAL.]
FRED. AUGUSTUS SMITH. [SEAL.]

Sealed and delivered in presence of—
HENRY H. DENISON.

Approved by—.
E. H. NORTON,
Chief Justice Supreme Court Missouri.

652 [Endorsed:] No. —. Supreme court of the State of Missouri. David L. Hammond *et al. vs.* Walter S. Johnston, receiver, *et al.* Appeal bond. $——. Dated 4th day of April, 1888. Filed — day of ——, 187–. H. W. Ewing, clerk, by Rowan Ray, D. C.

UNITED STATES OF AMERICA,
Eastern District of the East Judicial District of Missouri, } *sct:*

Before me, T. L. Crawford, commissioner United States circuit court, eastern division, eastern judicial district of Mo., personally appeared Frederic Augustus Smith and Melvin L. Gray, to me well known, who upon oath state that they are each worth over and above their indebtedness the sum of one thousand dollars, and that they own real property to that amount, subject to execution, in the eastern district of Missouri.

FREDERIC AUGUSTUS SMITH.
MELVIN L. GRAY.

Subscribed and sworn to before me this 3rd day of April, 1888.

T. L. CRAWFORD,
Commissioner United States Circuit Court, Eastern Division, Eastern Judicial District of Mo.

653 STATE OF MISSOURI, *sct:*

I, Henry W. Ewing, clerk of the supreme court of the State of Missouri, do hereby certify the foregoing to be a full, true, and complete transcript of the record and proceedings in the above-entitled cause, as fully as the same remain on file and of record in my office.

In testimony whereof I hereunto set my hand and affix the

Seal of the Supreme Court of Missouri.

seal of said court, at office in the city of Jefferson, this 3rd day of September, A. D. 1888.

HENRY W. EWING, *Clerk*,
By ROWAN RAY, *D. C.*

Endorsed on cover: Missouri supreme court. No. 114. David L. Hammond, Charles L. Hammond, Mary A. Kingman, Emma W. Kingman, *et al.*, plaintiffs in error, *vs.* Walter S. Johnston, receiver of the National Bank of the State of Missouri, and Clara A. Baker. Filed September 22, 1888.

H. M. MYERS.

Handle-Sockets for Shovels, Spades and Scoops.

No. 208,258. Patented Sept. 24, 1878.

Fig. 1

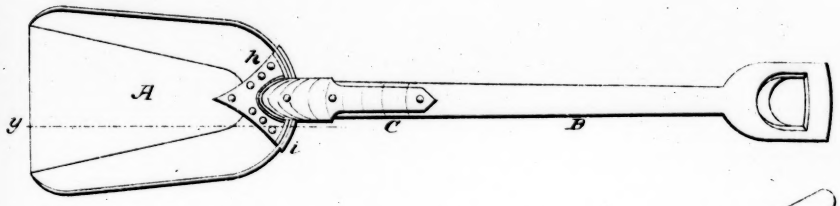


Fig. 2

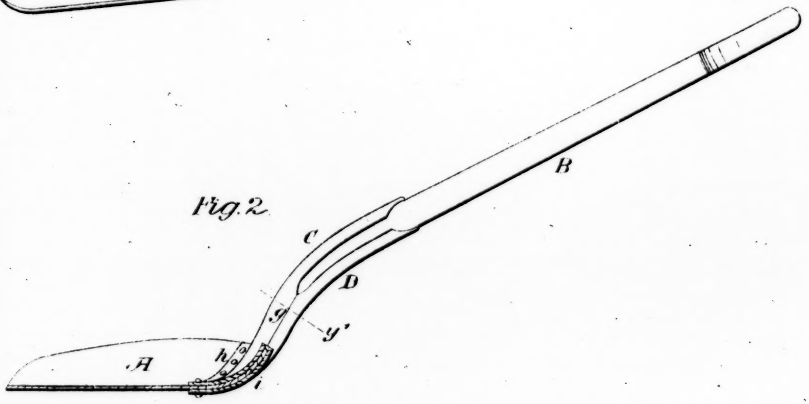
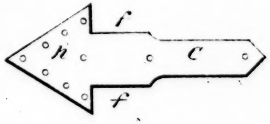


Fig. 3

Fig. 4



Attest
James L. Johnston
H. M. Myers.

Inventor
Henry M. Myers

UNITED STATES PATENT OFFICE.

HENRY M. MYERS, OF BEAVER FALLS, PENNSYLVANIA, ASSIGNOR TO ELLA D. MYERS, OF SAME PLACE.

IMPROVEMENT IN HANDLE-SOCKETS FOR SHOVELS, SPADES, AND SCOOPS.

Specification forming part of Letters Patent No. **208,258**, dated September 24, 1878; application filed April 20, 1878.

To all whom it may concern:

Be it known that I, HENRY M. MYERS, of Beaver Falls, county of Beaver, and State of Pennsylvania, have invented a new and useful Improvement in Shovels, Spades, and Scoops; and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon.

My invention relates to an improvement in shovels, spades, and scoops; and consists in the peculiar construction of the handle-straps, whereby a socket and straps are combined for attaching the handle to the shovel-blade.

To enable others skilled in the art with which my invention is most nearly connected to make and use it, I will proceed to describe its construction and operation.

In the accompanying drawings, which form part of my specification, Figure 1 is a top view of my improvement in shovels, spades, and scoops. Fig. 2 is a side view of the same, representing the blade and straps at line *y* of Fig. 1. Fig. 3 is a transverse section of the handle-straps at line *y'* of Fig. 2. Fig. 4 is a top view or plan of the handle prior to being swaged into form for attaching to the shovel, spade, or scoop blade.

In the drawings, A represents a scoop-blade, which may be of any of the known forms, and constructed of the ordinary material. B represents the handle, which is constructed of wood. C and D represent the handle-straps, which are cut (in the form shown in Fig. 4) from sheet-iron or sheet-steel, and furnished with openings for the rivets used for attaching them to the blade A and handle B. The straps C and D are then swaged into the form necessary for the upper and lower strap, as indicated in Figs. 1 and 2, so that the edges *f f* in Fig. 4 meet, as at *g* in Figs. 2 and 3, forming the socket *e*. (Indicated in Fig. 3.) The parts *h* and *i* of the straps C and D are then riveted to the blade A. The straps C and D may be forged and plated with the blade A. The handle B is then fitted into the socket *e*, and the straps riveted to the handle, as shown in Figs. 1 and 2.

By constructing handle-straps in two pieces, of the form shown in Fig. 4, a socket for the reception of the end of the handle is formed, having the advantage of the ordinary handle-straps combined with said socket, whereby the handle is greatly strengthened and securely attached to the blade A; and said combined socket and handle-straps are constructed with economy of labor and material, and with great facility.

I am aware that a continuous socket for shovels has been made in two pieces; and I am also aware that a solid socket has been formed with handle-straps; but, in contradistinction to such,

I claim—

As an improved means of securing handles to shovels, the herein-described combined socket and straps, the same being composed of the two straps C D, forming a union at *g*, and terminating in the socket *e*, as shown and described.

HENRY M. MYERS.

Witnesses:

JAMES J. JOHNSTON,

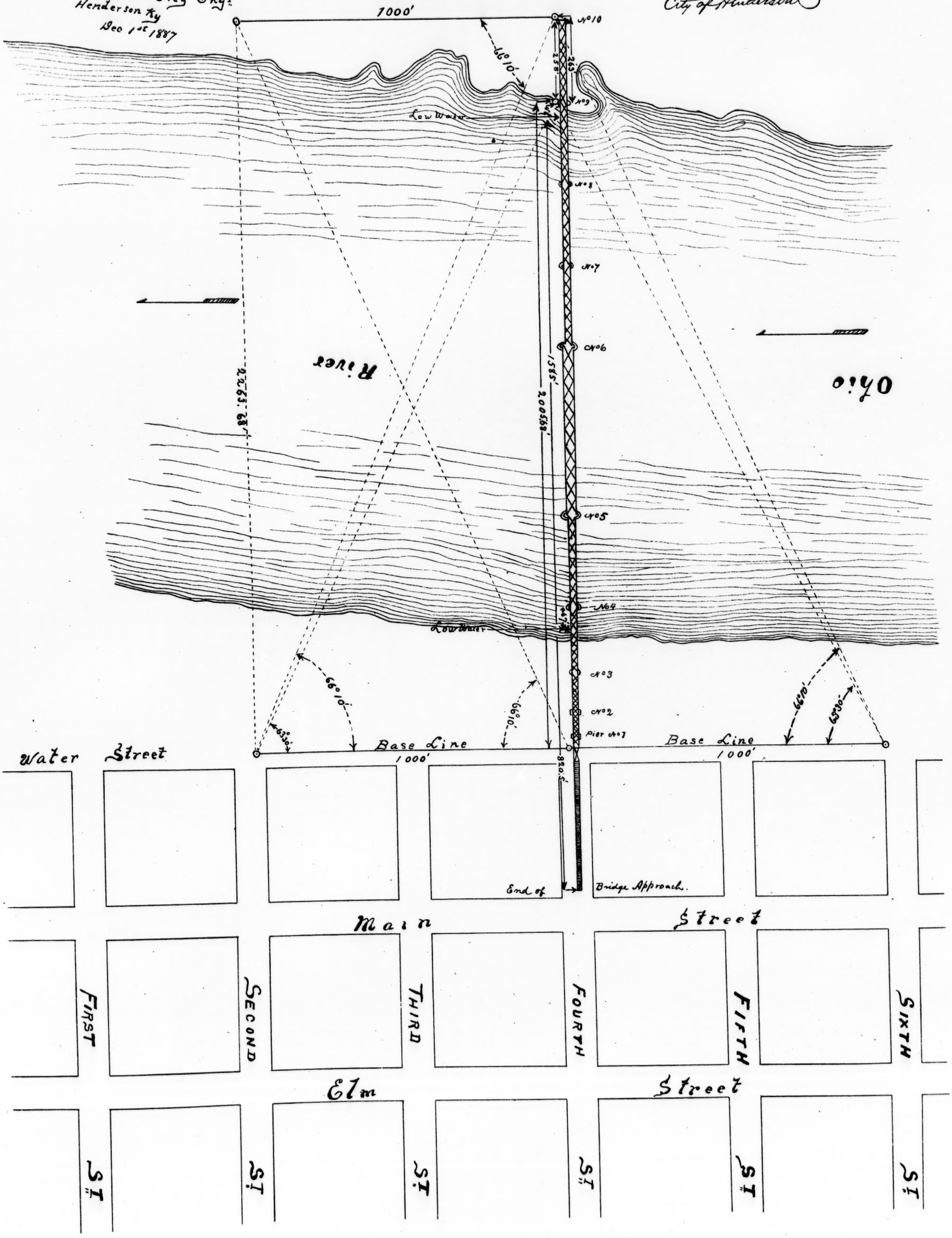
C. H. MYERS.

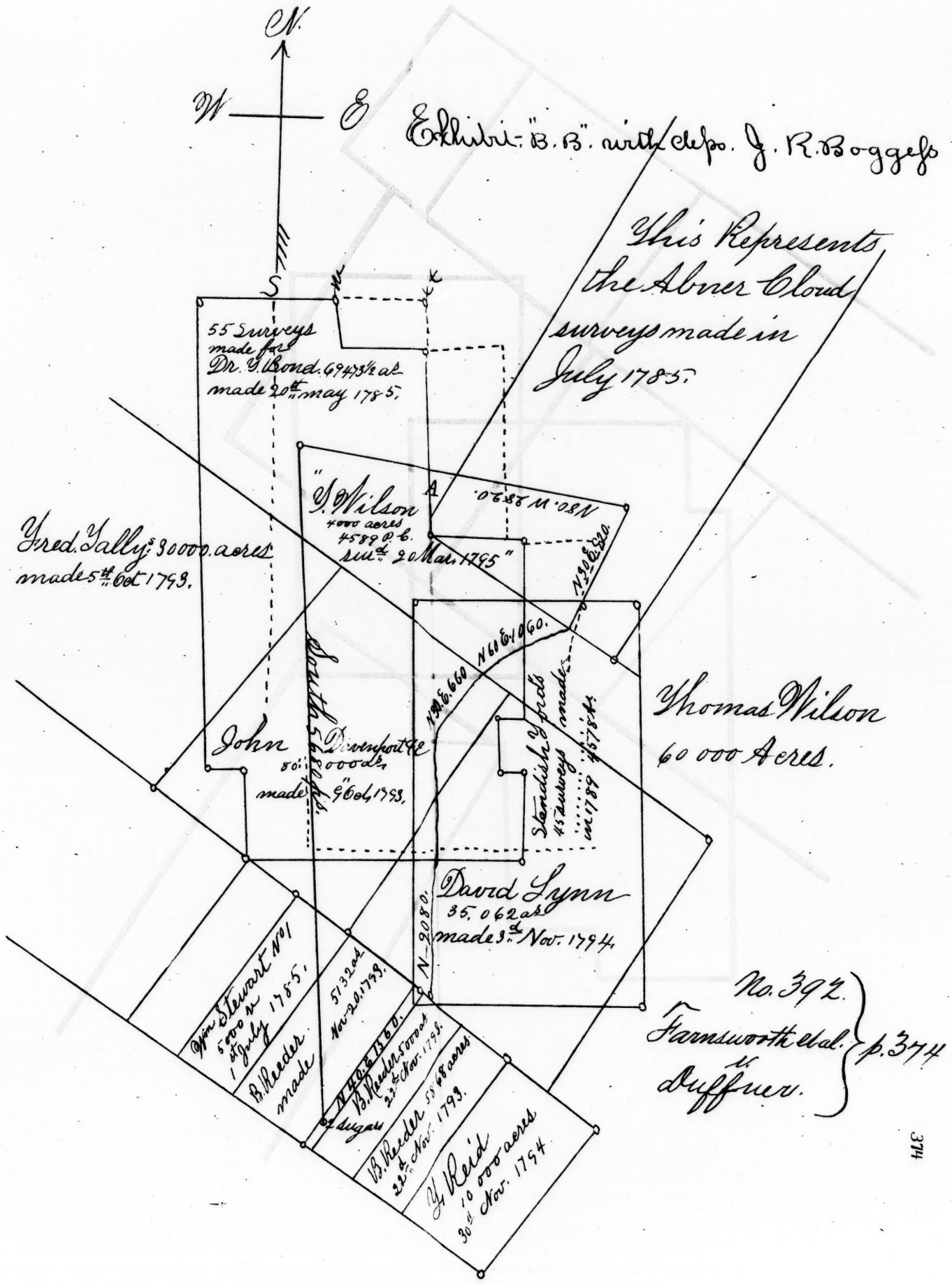
PLAT OF Survey of THE HENDERSON BRIDGE AND The Ohio River between Low Water mark on both the Kentucky and Indiana Shores

Scale 1" = 200'

Chas. W. Quinn,
City Engr.
Henderson Ky
Dec 1st 1887

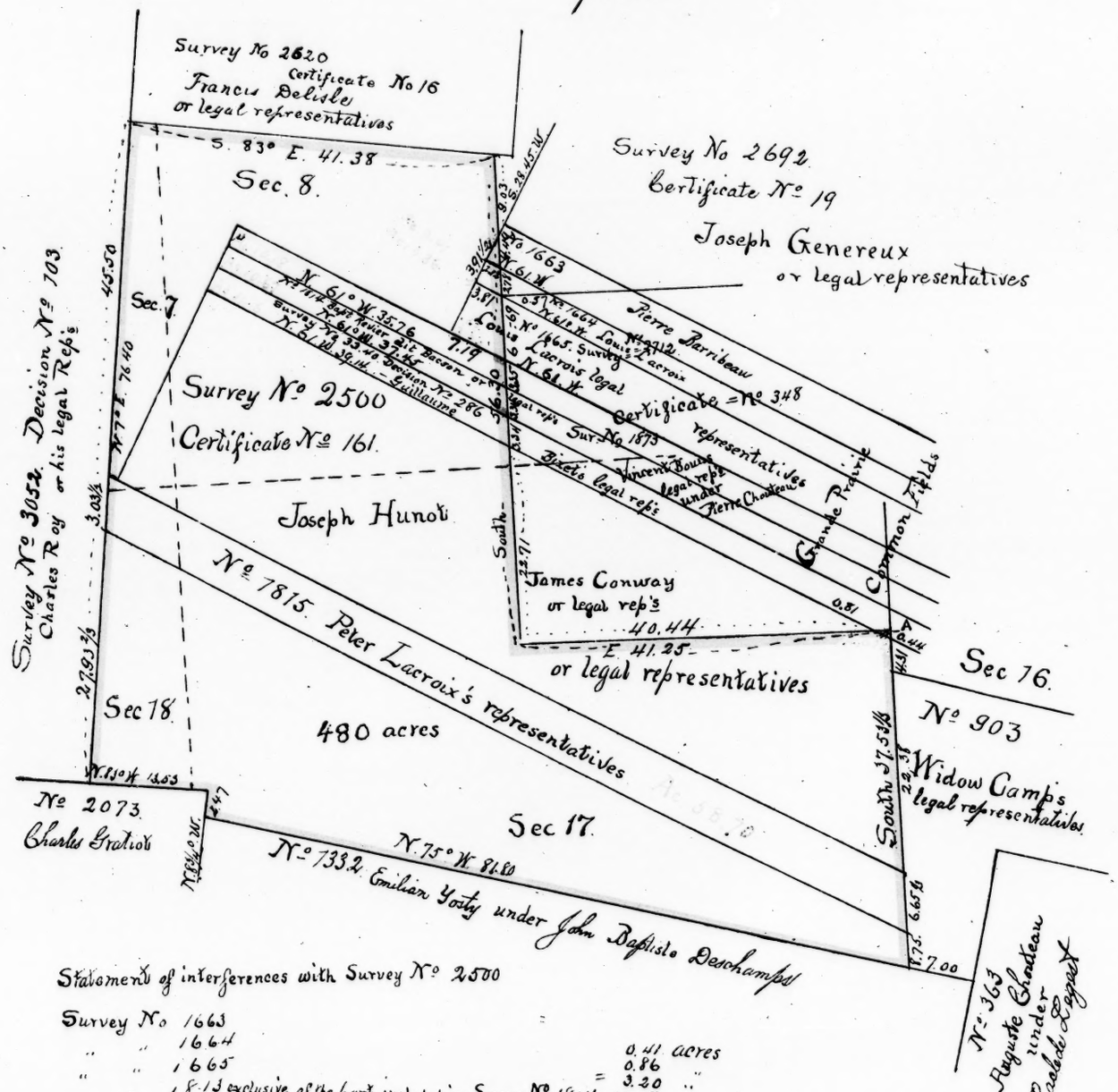
no. 1007.
Henderson Bridge Co.
-v-
City of Henderson
} p. 49.




N.
W
E
S
Exhibit "B.B." with Depo. J. R. Boggess
This Represents the Abner Cloud surveys made in July 1785.
55 Surveys made for Dr. T. Bond. 694 3/4 ac. made 20th may 1785.
"T. Wilson 4000 acres 4589 P.C. Surv'd 20 Mar. 1795"
A
N 80° W 98 P.
N 30° E 320.
Fred. Talley 30000. acres made 5th Oct 1793.
N 60° E 960.
N 60° E 660.
John Davenport 80 000 ac. made 9th Oct 1793.
South 58 Rods.
Standish & Prods 45 Surveys made in 1789 4578 ac.
Thomas Wilson 60 000 Acres.
David Lynn 35. 062 ac made 3d Nov. 1794.
N 20° E 80.
Wm Stewart No 1 5000 ac 1st July 1785.
B. Reeder made
513 2 ac Nov 20. 1793.
N 40° E 160.
B. Reeder 500 ac 23d Nov. 1795.
Sugar
B. Reeder 5548 acres 22d Nov. 1793.
T. Reid 10 000 acres 30th Nov. 1794
No. 392.
Farnsworth et al. v. Duffner.
p. 374
374

T. 45. N. R. 7. E of the 5th prl M.

No. 114. Hammond et al. v. Johnston, Re'te } p. 119



Statement of interferences with Survey No 2500

Survey No 1663		0.41 acres
" " 1664		0.86 "
" " 1665	=	3.20 "
" " 1813 exclusive of the part included in Survey No 1814.		10.18
" " 1814		10.67
" " 3340		11.16
" " "		0.02.
" " 1815		58.70

Total . 95.20 acres

Scale 15 chains to an inch

No. 114.
Hammond et al
v.
Johnston, Rec.r
p. 175a

Connected Plat of the southern part of the Grande Prairie Common Field of St. Louis as surveyed by Wm. H. Cozens D.S. under instructions from the Surveyor General of the 9th May 1846.

175

situate in T 45 N. R 7 E. 5th p.l. M.r

Note. The surveys executed by Wm. H. Cozens are indicated by black writing on the plat. Those surveys shown in red are of a prior date. The lines of Surveys No. 2449, 2350 & 2692 & 2112 were retraced by Mr. Cozens as far as he found necessary to make the proper connection of the same with the lines of his survey.

Sec. 5

Sec. 8

Survey No. 2620
N.M. Certificate No. 16
Francis Delisle.
or Rep.s
20 arp.s = 110-14 acres

Lot No. 1 Louis Conde 11.91 — confirmed by the acts of 1812 and 1824

Lot No. 2 Francis Beguette under Antoine Marechal — No confirmation, neither to Beguette nor Marechal found of record

Lot No. 3 Louis Desheloes — No confirmation found of record

Lot No. 4 Francis Marechal senior's Legal Rep.s — confirmed by the acts of 1812 and 1824

Lot No. 5 Francis Morcare — No confirmation found of record

Lot No. 6 Augusle Conde 11.91 — confirmed by the acts of 1812 and 1824

Lot No. 7 Francis 5.5 Faustin dit Parent — confirmed by the acts of 1812 and 1824

Lot No. 8 Benito Vasquez — confirmed by the act of 5.05 29th April 1816

Lot No. 9 Pierre Barrichaume — confirmed

Lot No. 10 Joseph or Louis Lacroix — confirmed to Louis Lacroix by the acts of 1812 and 1824.

Lot No. 11 Louis Laroche — confirmed by the acts of 1812 and 1824

Lot No. 12 Rondeau Alexander Langlois — No confirmation found of record

Lot No. 13 Baptiste Riviere dit Sidcanne — confirmed by the act of 29th April 1816 and by the acts of 1812 & 1824

Lot No. 14 Jeanlouis Provenchere under Guillaume Bizelle — confirmed by the act of 4th July 1836

Lot No. 15 Francis Corneau dit Montigny — No confirmation found of record

Lot No. 16 Pierre Bergen — No confirmation found of record

Lot No. 17 John Baptiste Petit under Joseph Fallardeau — No confirmation found of record

Lot No. 18 Francis Laberge dit Thibault — No confirmation found of record

Lot No. 19 Charles Hemmon — No confirmation found of record

Lot No. 20 Pierre Lacroix's Legal Representatives confirmed by the act of the 29th April 1816

Lot No. 21 Joseph Dubé — No confirmation found of record

Lot No. 22 Joseph Jouin dit Larochelle confirmed by an act of 2d July 1836. 2 by 40 contains

John Bap.te Kerrieux's Rep.s as surveyed by Wm. H. Cozens — confirmed by the act of 29th April 1816 — 2 by 40 arp.s

Survey No. 7276 Legal Representatives of Augustle Conde' (or Lot No. 1 according to Copy) & by him surveyed in the name of Louis Conde' Benoude a/s of Augusta Conde — confirmed by the old Board of Comm.rs or Jacques Marechal

From the Spring near the Conde's House N 80° E 1.00 Link

Laws relating to Land reserves for school in Townships
20th May 1785 page 332 Land Law Edition 1828
18th May 1796 p. 460 Vol. 1 U.S. Statutes at Large
26th March 1804 p. 279 " 2 " " "
15th February 1811 p. 621 " 2 " " "
3d March 1811 p. 665 " 2 " " "
20th May 1826 p. 179 " 4 " " "

Documents D accompanying the Surveyor General's report of the 19th August 1852
& the Comm.r of the Gen.l Land Office

New Madrid Locations interfered with by Mr. Cozens Survey.

No. 19 Joseph Genereux
Certificate for 160 acres issued 12th Nov. 1815
Located 12th December 1817
Surveyed as No. 2693 on 23d June 1819
Patent certificate No. 2318 issued 4th February 1823

No. 145. Martin County
Certificate for 640 acres issued on 18th Sept.r 1816
Located 29th May 1818
Surveyed as No. 2699 in July 1818
Patent certificate No. 309 issued 17th Nov.r 1822

No. 161 Joseph Hunot
Certificate for 480 acres issued on 12th Aug.st 1816
Located 26th June 1818
Surveyed as No. 2500 on the 23d June 1819
Patent certificate No. 404 issued 2d February 1833

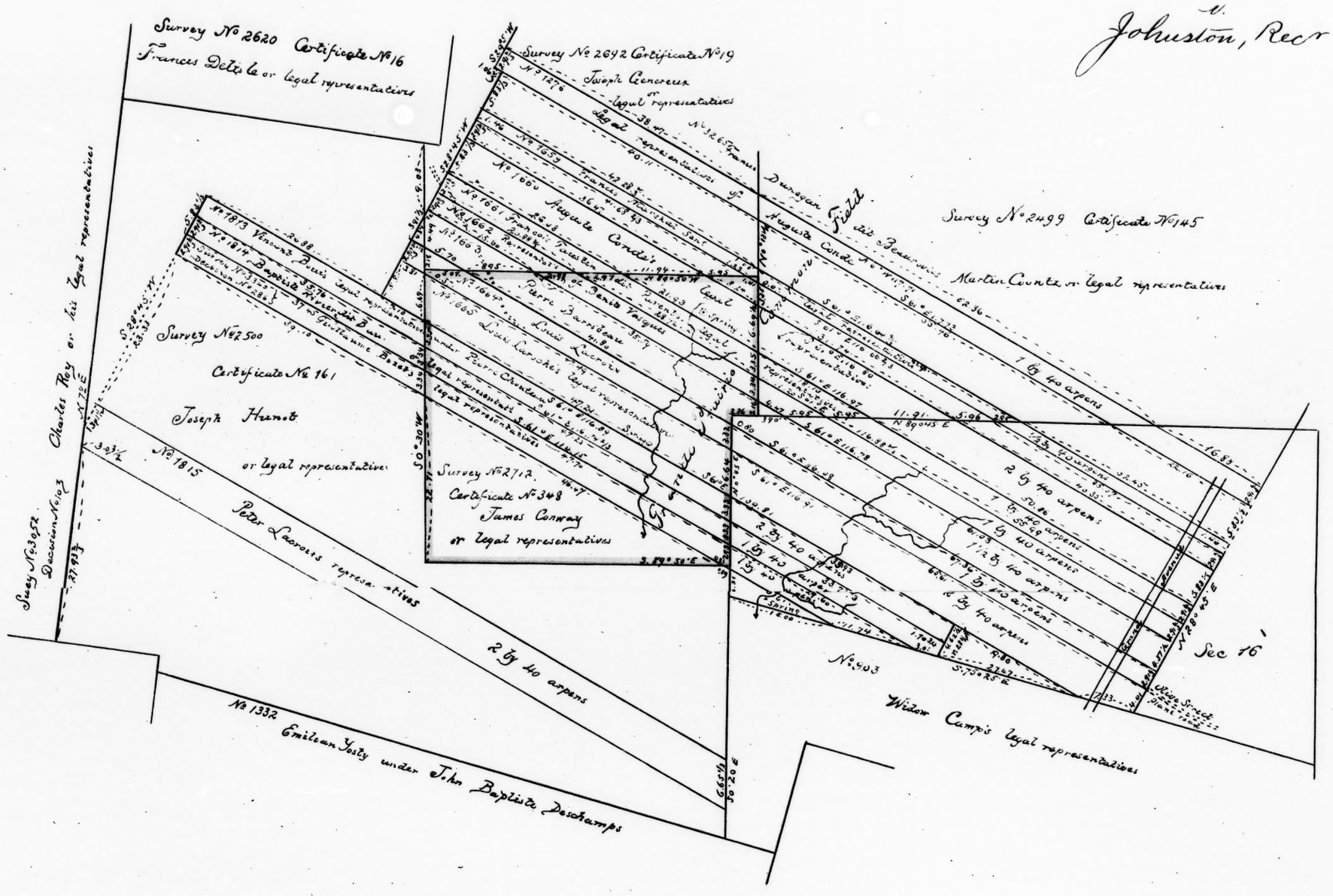
No. 348 James Conway
Certificate for 200 arpens issued on 20th November 1817
Located June 16th 1818
Surveyed as No. 2712 the 23d June 1819
Patent certificate No. 322 issued 20th May 1823.

Scale of 10 chains to an inch

T 45 N R. 7 E of the 5th p.l M.

229

No. 114.
Hammond et al
v.
Johnston, Recr
} p 229



Tabular Statement of the Surveys and parts of Surveys shown on this Diagram

No of Survey	Confirmees	Area of Survey arpens	Area of Survey acres	Confirmatory Act	References
1276	Aug ste Condés legal Repr.	40		Act of 3d March 1807 as per Comm Ct No 1276	St. papers II p 60
1659	Francis Marschal Senr legal Repr.	20		Act of 13th June 1812 as proved under act of 26 May 1824	Hunt's list No 591
1660	Auguste Condés legal Repr.	80		Act of 13 June 1812 as proven under act of 26 May 1824	Hunt's list N 590
1661	Francois Faustin dit Parent's legal Repr.	40		Act of 13 June 1812 as proven under Act of 26th May 1824	Hunt's list N 592
1662	Representatives of Benito Vasquez	40		Act of 29th April 1816	St papers III p 276
1663	Pierre Barribeau	60		Act of 13th June 1812 as proven under act of 25 May 1824	Hunt's list N 3
1664	Louis Lacroix	40		Act of 13th June 1812 as proven under Act of 26th May 1824	Hunt's list N 4
1813	Vincent Bouis legal Repr. under Pierre Chouteau	80		Act of 13th June 1812 as proven under act of 26th May 1824	Hunt's list N 39
1814	Baptiste Riviere de Bacanne's legal Representatives	40		Act of 29th April 1816: also Act of 13th June 1812. as proven under act of 26th May 1824	State papers III p 280 and Hunt's list N 588
3340	William Bizets legal Repr.	40		Act of 4th July 1836	Decision N 286
1815	Peter Lacroix's Repr.	80		Act of 29th April 1816	State pap III p 278
2499	Martin Coontz or legal Repr.		640	Act of 17th February 1815	Location cert N 145
2500	Joseph Hunot or his legal Repr.		480	Act of 17th February 1815	Location cert N 61
2692	Joseph Genereux or his legal Repr.		160	Act of 17th February 1815	Location cert N 9
2712	James Conway or his legal Repr.	200		Act of 17th February 1815	Location cert N 348
	Section 16		28392	Reserved for the use of Schools	
1665	Louis Laroches legal Repr.	80		Act of 13 June 1812 as proven under act of 26th May 1824	Hunt's list N 389

Office of the Surveyor General for Illinois and Missouri
Saint Louis 26th February 1855

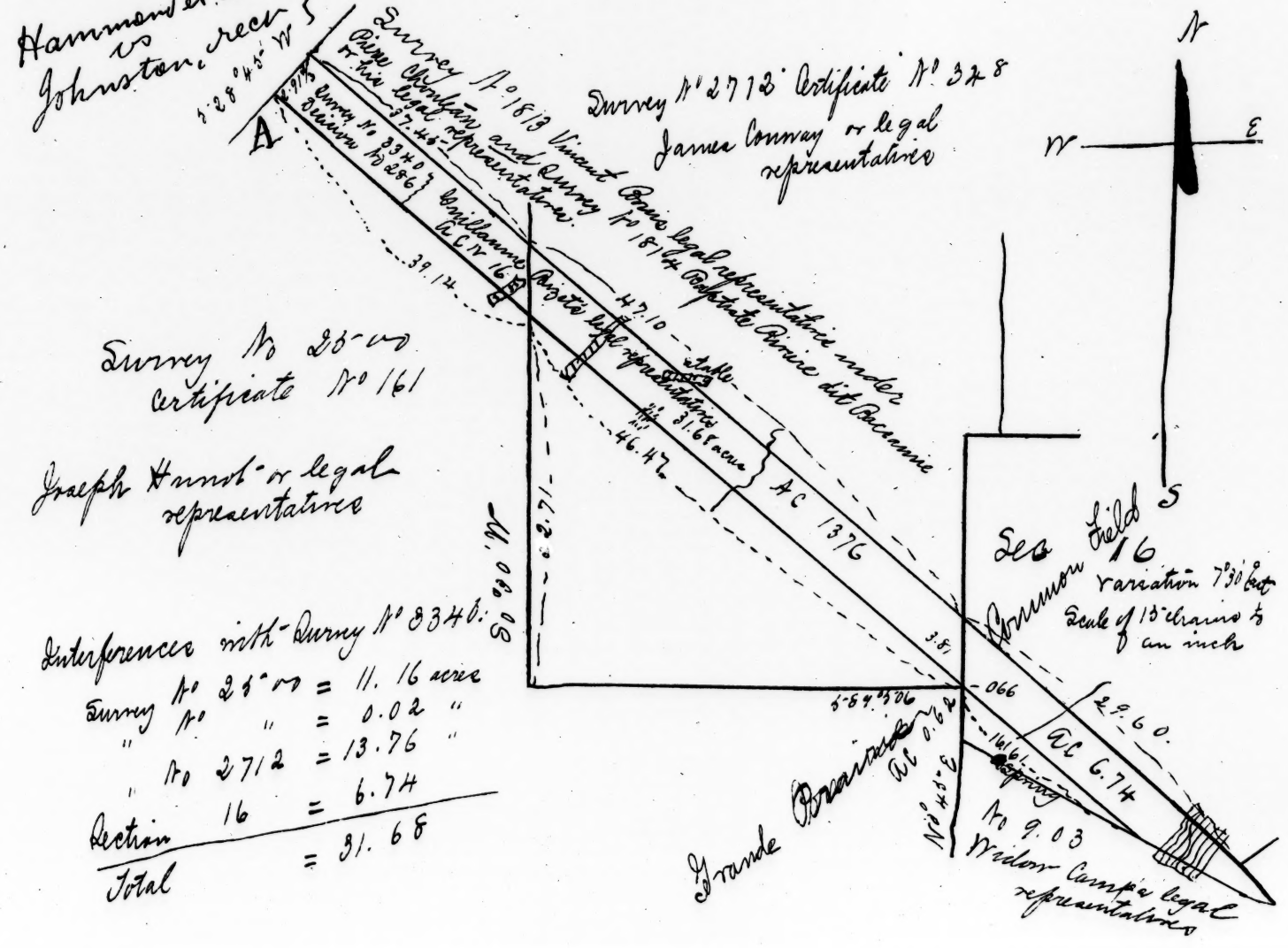
The above plat of private Surveys No 1276 - 1659 - 1660 - 1661 - 1662 - 1663 1664 - 1665 - 1813 - 1814 - 3340 and 1815, in the Grande Prairie Common field of St Louis in Township 45 North of the Base line and Range 7 East of the 5th principal meridian and showing the interferences of said Surveys with other claims is strictly conformable to the Field notes thereof on file in this office, which have been examined and approved. The said Surveys were executed by William H. Cozzens, Deputy Surveyor, under the several instructions from this office dated 3d May 1846 - 22d February 1855 - and 7th August 1855. The said plat is made out pursuant to the directions of the Commissioner of the General Land office dated the 27th November 1856; and the said Surveys have been platted, described and approved in accordance with said directions. This plat is likewise hereby approved with the express reserve however that this approval is in no manner intended nor shall be construed to interfere with the valid rights, if any such exist, of the owners of the claims conflicting with the aforesaid Surveys

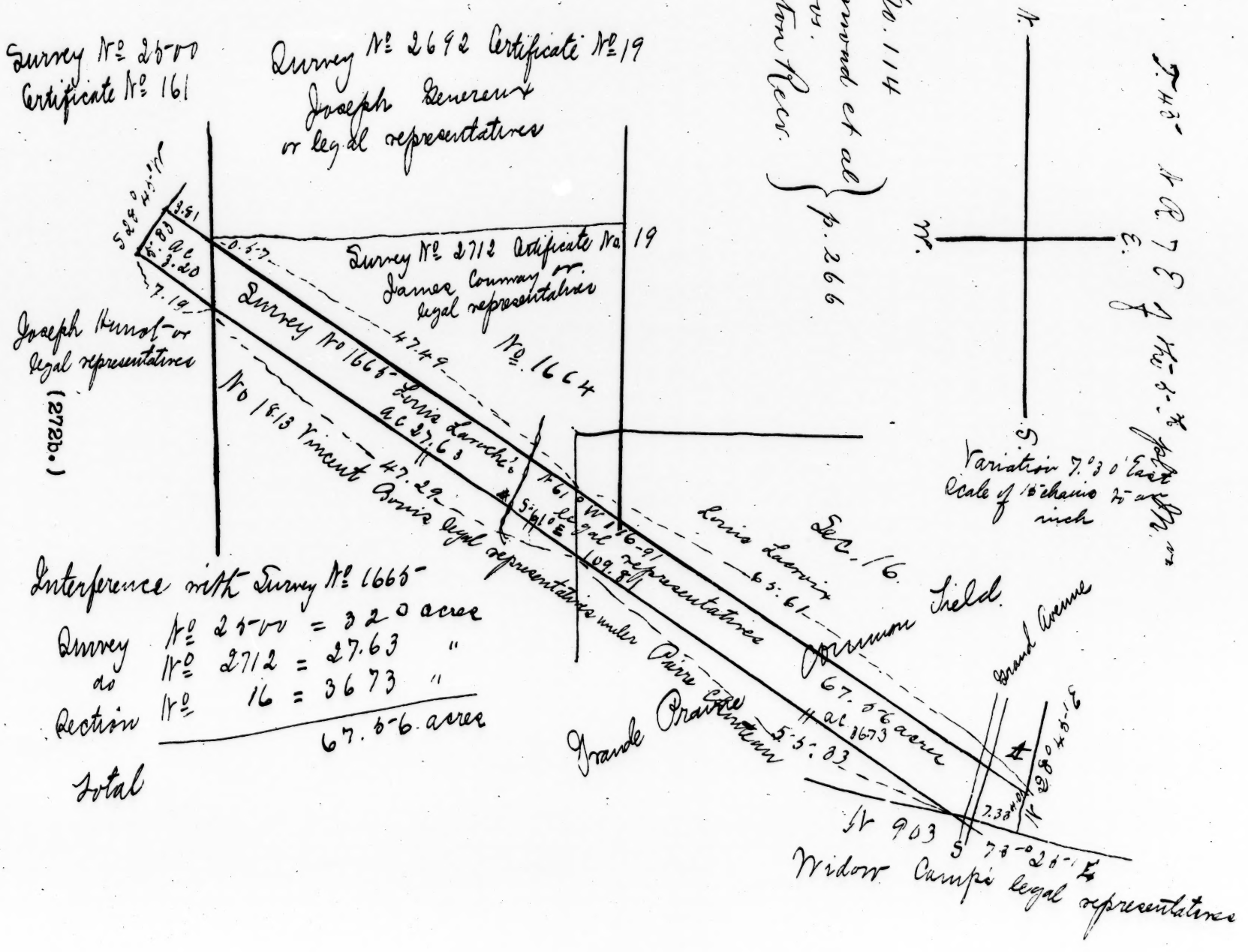
Jno Loughborough.
Surveyor General.

T. 45 N. R. 7 E of the 5th pl M.

No 114.
Hammond et al
vs
Johnston, recr

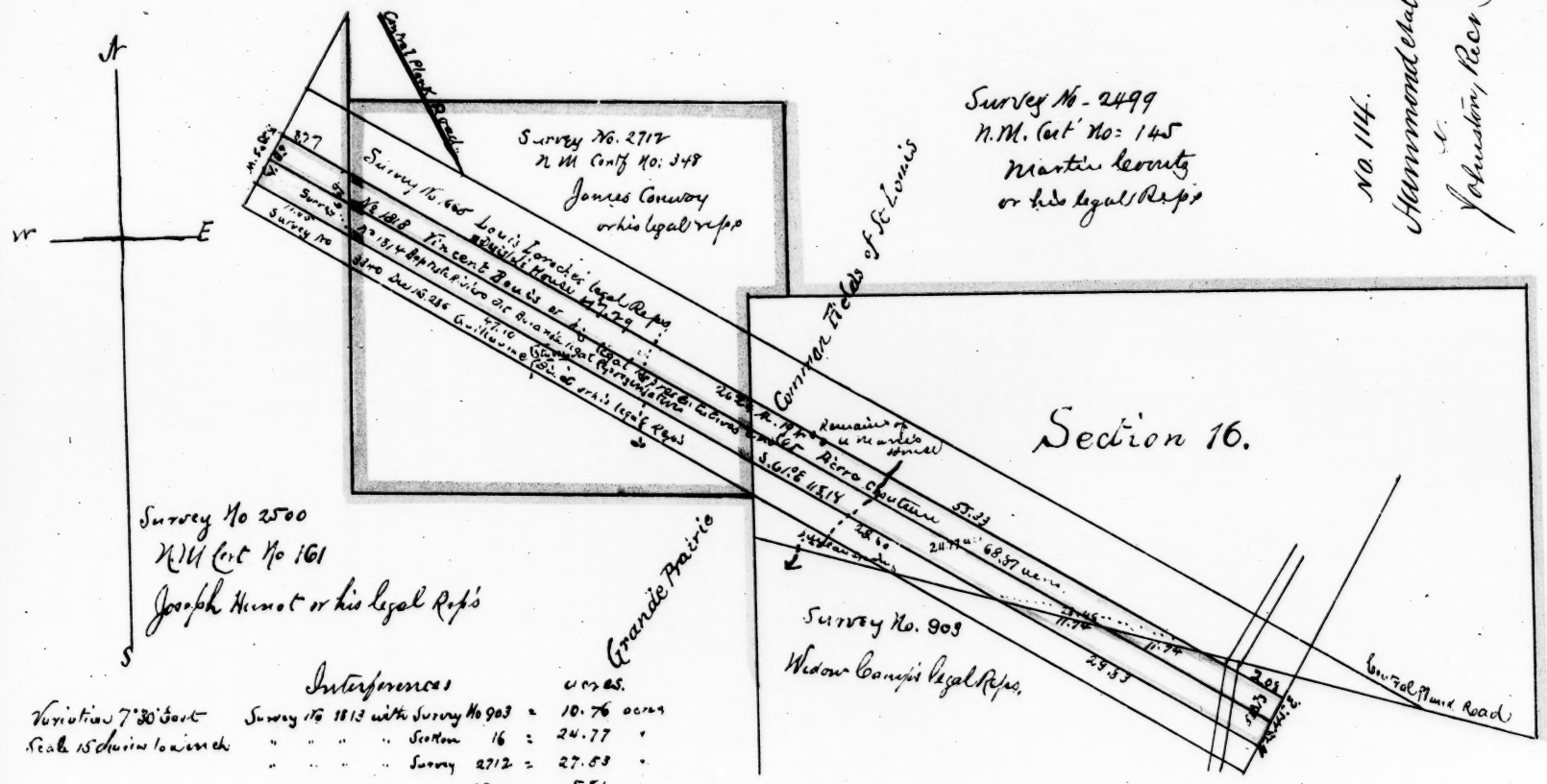
P. 259




No. 1114
Hammond et al
vs.
Johnston Recr.
p. 266
N.
W.
E.
S.
Variation 7° 30' East
Scale of 16 chains to 2 inches
Survey No. 2692 Certificate No. 19
Joseph Benevent
or legal representatives
Survey No. 2600
Certificate No. 161
Survey No. 2712 Certificate No. 19
James Connway or
legal representatives
No. 1664
Survey No. 1665 Louis Lacroix
Survey No 1613 Vincent Ovide Legal representatives
Joseph Hunot or
Legal representatives
(2720.)
Interference with Survey No. 1665
Survey No. 24-00 = 320 acres
do No. 2712 = 27.63 "
Section No. 16 = 36.73 "
Total 67.66 acres
Sec. 16.
Louis Lacroix
Grand Prairie
Common Field
Grand Avenue
67.66 acres
Widow Campis legal representatives

T. 45. N. R. 7 E 5th pl Mer

No 114. Hammond et al v. Johnston, Recr



Interferences

Survey No 1813 with Survey No 903	=	10.76	acres
" " " " Section 16	=	24.77	"
" " " " Survey 2712	=	27.53	"
" " " " 2500	=	5.81	"
aggregate	=	68.87	acres.

Variation 7°30' East
Scale 15 chains to inch

No. 114.
Hammond
et al
vs.
Johnston
et ux.

T 45 N. R 7 E. 5th pm. Mo.

Section 16.

Survey No. 1813. Vincent Bouis' legal Representatives under and Perre Chouteau

Survey No. 1814. Baptiste Bruce dit Saccarre Legal Representatives

Survey No. 2712 M.M. Cert No 348

Survey No 2300
M.M. Certificate No: 161.
Joseph Hunot
or His legal Reps

Survey No 903
Widow Gamp's legal
Representatives

Prairie Commun Fields of St Louis

Creek

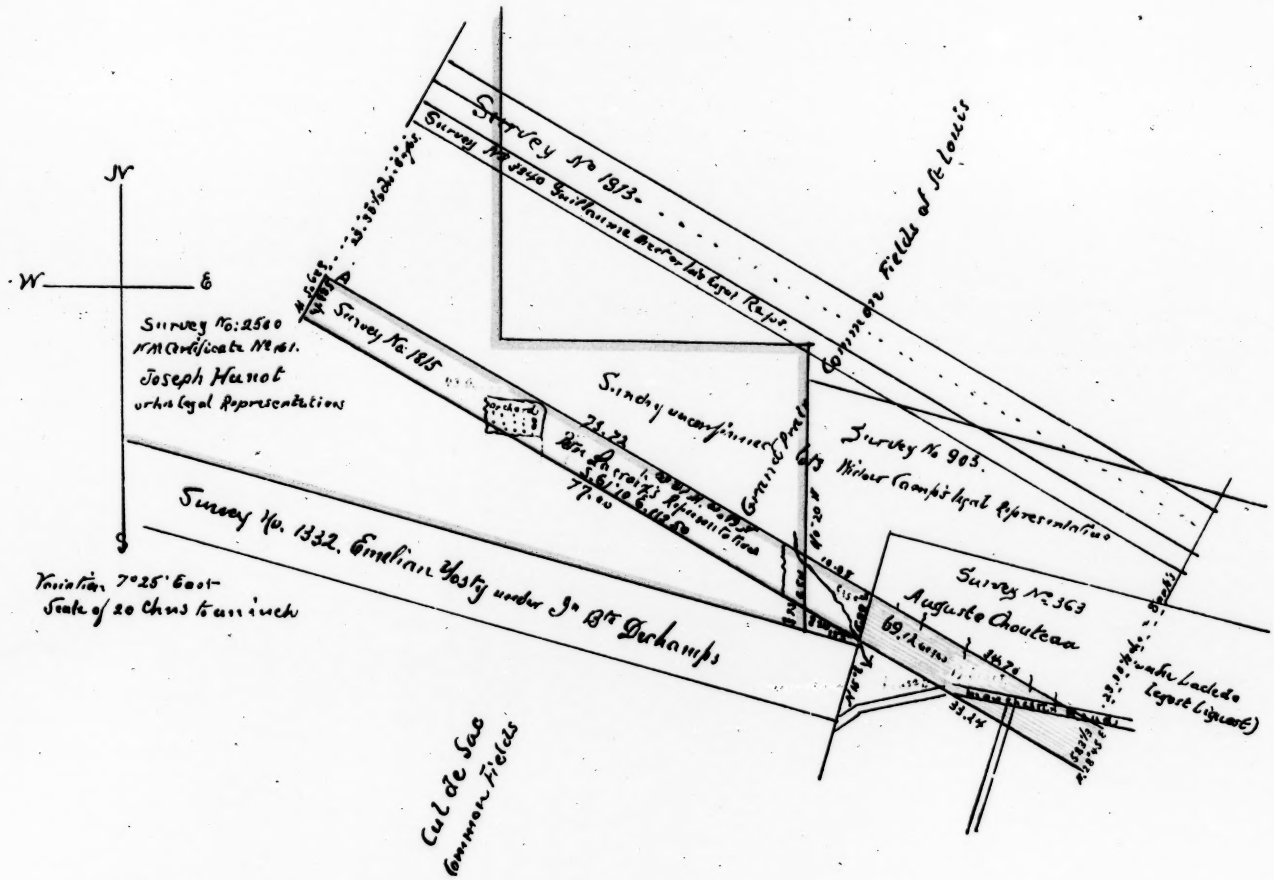
Variation 7° 30' East
Scale of 15 chains to an inch

Intersected

Survey No: 3840 with Survey No: 903. = 10.36 acres
" " " " Section 16 = 6.74 "
" " " " Survey " 2712 = 13.76 "
" " " " 2680 viz:
South of Survey No: 2712 = 0.02
West of Survey " " = 3.62 = 3.64
aggregate = 34.50 acres

009

T. 45. N. R. 7. E 6th pl Mer

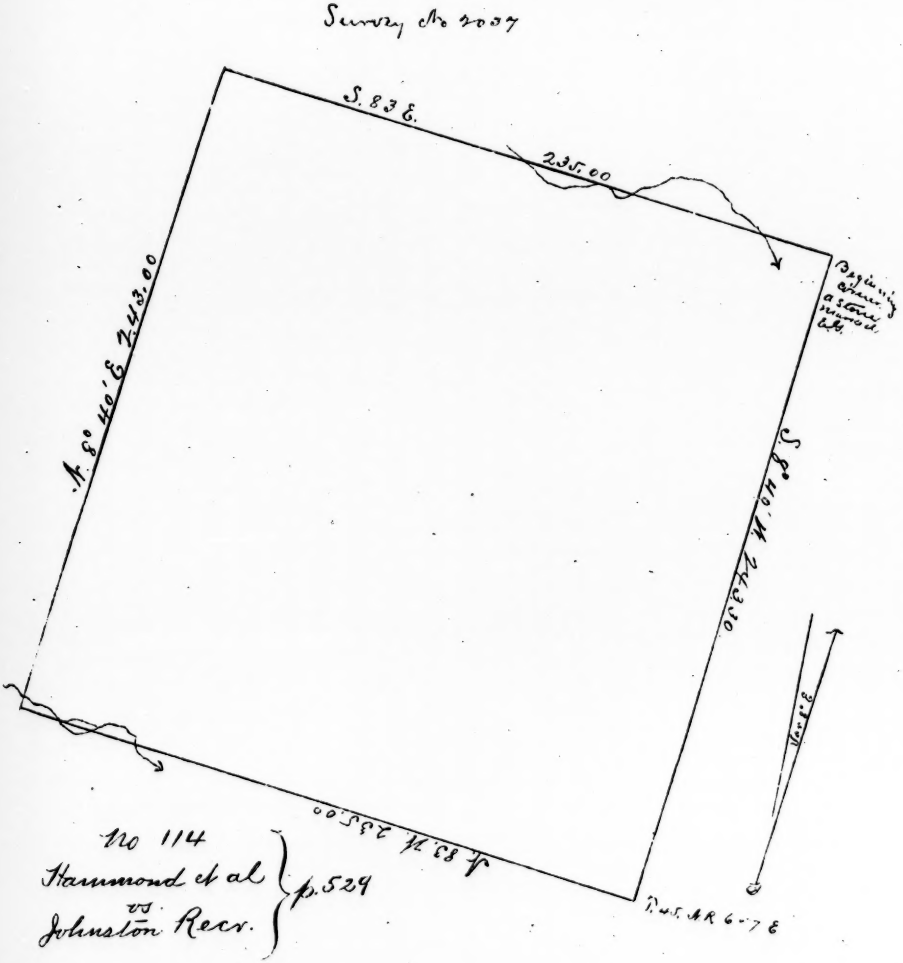


Interferences

		Areas
Survey No: 1815 with Survey No: 363	=	19.81 acres
" " " " " " 903	=	5.36 "
" " " " " " 2580	=	43.96 "
Aggregate	=	69.12 acres.

No. 1114.
Hammond et al.
v.
Johnston, Recr
} p. 511

511



110 114
Hammond et al
vs
Johnston Recr.
} p. 529